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Director's Decisions for California

Oil & Gas

1949-1959

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OIL AND GAS
Decisions on Appeal to Dept.

6/30/41	Certification of lands to a State conveys as complete a title as patents. Frasher v. O'Connor (115 U.S.102). The certification of some of the land and the patent for some of the land, without reservation of Oil or Gas to the U.S.,entirely took such land out of the jurisdiction of this Dept. (Moore v. Robbins (95 U.S. 530.) The appeallant could not gain anything by his lease appn.for land patented without reservation. A patent is not subject to collateral attack. (Los Angeles 053733)
9/19/43	Los Angeles 053733 Motion for rehearing denied.
9/20/48	Regulations require a description by metes and bounds of unsurveyed land. Applications failed to include such description and applications were defective and should have been rejected. (Witbeck v Hardeman, 51 F. (2d) 451. Salt Lake City 066103, etc.
2/28/49	Decision of BLM affirmed for reasons set forth in L.B.Bear et al decision A-20806, 10/6/47.Sac.031625.
3/17/49	Same as 031625. Sac. 038070.
3/23/49	" " " BLM 016365, etc.
3/23/49	" " " BLM 016517 etc.
3/24/49	Appn.rejected. Part of land patented without O & G res., and part withdrawn and placed under administrative jurisdiction of Indian Affairs. Santa Fe 080580.
4/6/49	Appn. rejected because the U.S.has no right to use land in Cerritos Channel for production of O & G. L.A. 053303.
4/8/49	Motion for rehearing denied. Land included within old San Pedro & Santa Gertrudes grants. Dept. had no jurisdiction over land. LosAngeles 052902-29.
4/8/49	Appn.rejected for reasons in L.B.Beer et al decision. Los Angeles 053030. Submerged land.
4/8/49	Petition for exercise of supervisory authority denied. Land situated below mean high tide held in decision 2/4/37. Los Angeles 052752, 052766, 052705).
4/19/49	Mining claims constituting bases of the contests are not valid. Contest against oil and gas lease dismissed.
5/3/49	Appeal dismissed. Conflicting appns. wdrn. Las Cruces 065461,065496,065497-8.
5/10/49	Part of Land in appn.was formed by artificial means subsequent to original survey of mainland in 1867. At that time all the land involved lay below the line of mean high tide. Appn.rejected for reasons given in L.B.Beer decision. Part In San Pedro private land grant and appn.rejected thereto. Los Angeles 053530. 053555.

5/17/49	Appn. rejected. Land in Stock Raising Hd. but within a National Monument. (Phoenix 085075).
5/19/49	Appn. rejected. Land temporarily wdrn. in aid of proposed legislation. Revocation of wdrl. does not validate an appn. filed at time land was wdrn. (Salt Lake 068409).
5/31/49	Appn. rejected. Land temporarily wdrn. Revocation of wdrl. does not validate appn. filed at time land was wdrn. (Salt Lake 065091).
6/27/49	Appn. rejected. Land in Nat'l. Monument. (Evanston 021987).
7/5/49	Holder of 10 year lease for land on known structure has no pref.right, Not entitled to 5 yr. extension. Not entitled to 2 yr.ext. in absence of drilling operations on date of expiration of lease. Not entitled to extension because lease was formerly in unit agreement where agreement terminated more than 2 years prior to expiration of 10year term of lease. (Bismarck 022542).
7/28/49	Appn. rejected for pref. to lease by stockraising homesteader. No pref. held by such entryman or patentee. (Cheyenne 076876).
8-4-49	Unsurv. lands A 25732 M. Prescott
8/19/49	(1) D.L.O. decision in a contest proceeding between private parties, in which Govt. has intervened, is subject to review by BLM even though no appeal filed. (2) Field report treated as confidential & request by appellant to be permitted to examine it denied. (3 & 4) relate to validity of mining claim. (5) Mining claimants who protest the issuance of O & G lease have the burden of proving that they have a valid, subsisting claim on the land. (Cheyenne 065580).
9/6/49	Proper to reject appn. where it appears that operations under lease would destroy the usefulness of the refuge for the purpose for which it was established. Gt.F.085319).
9/15/49	Appn. may be reconsidered where Bu.of Recla. changes its recommendation and reverses its adverse report to a favorable report. (Cheyenne 067318).
9/23/49	Subsequent appn. for lease must be rejected. (Ch. 067273).
10/6/49	Appn. rejected where lands adjacent to bank of river are within limits of grant. (Tierra Amarilla Grant Pubelo 060337).
10/27/49	Land on producing structure can be leased only by competitive bidding. (Los Angeles 076115).
11/7/49	Unsurveyed land must be described by metes and bounds. Bill.040378
11/7/49	Land held in trust for Indians not subject to O & G leasing. Land may be leased by authority of Tribal council etc.with appl. Sec.Int. GtFalls 087371

Not complete

11/10/49	Preference Right appln rejected - Prematurely filed. Appln. rejected and not appealed within the time allowed - applicant could not thereafter raise a question regarding the propriety of the rejection. Givernment personnel under no legal or moral obligation to notify lessee of his right to file for new lease. Las Cruces 068937
11/16/49	Appln will confer no rights where applns do not comply with regulations that land must be as nearly compact as possible or appln submitted by atty in fact must be accompanied by applicants own citizenship and acreage holdings. Buff 038990-94
11/17/49	O&G lease relinquished prior to lessee's entrance into armed service cannot properly be reinstated under S&S Relief Act of 1940)Ch 044216, 065028)
11/18/49	Relinquishments filed but not in accordance with lease terms governimg, lease continues to remain in effect and land is not subject to new appln. BLM-A 011668
11/18/49	No authority to renew 10-year O&G lease within producing structure. Cheyenne 079018, 064329
11/18/49	Surface owner of Stock-raising Hd has no pref. right to O&G lease Cheyenne 075190
11/21/49	Land considered to be within producing structure when compensatory royalty is charged for drainage. Formerly the practice when a prospecting permit embraced land partly within and partly outside producing structure was exchanged for a lease under sec. 13 of Min. leasing act, to issue 10-yr ls on the producing structure and separate 5-yr lease not on structure. Santa Fe 078042, 065588
11/29/49	Lands patented more than 6 yrs without reservation of O&G are not subject to oil and gas lease. An application for oil and gas lease must contain adequate descriptions of the lands desired. LA 055643
12/6/49	Surface owner of land patented under SRH act has no preference right to O&G lease. Cheyenne 078170.
12/14/49	Same as above.
3/24/50	Pursuant to sec. 39 of the act, the term of a lease is extended by any period of suspension during the life of the lease, irrespective of whether such suspension occurs during the original term fixed for the lease or during the extended term resulting from a prior suspension. Great Falls 084862

4-20-50 One who can claim title to the surface of land only under the act of August 7, 1946, is not eligible to claim, on the basis of that surface title, the benefits of sec. 20 of the Mineral Leasing Act. A-25761 BLM 012363, etc.

5-2-50 Patents--Resurveys--Indemnity Railroad Grant Lands.
A-25613 Standard Oil Co of Calif Sac 032188, etc.

5-11-50 Where an application for royalty benefits was rejected because evidence available indicated no discovery, and subsequently developed evidence clearly establishes that a discovery had in fact been made, the earlier action will be reconsidered and corrected. A-24200 Cheyenne 064741

5-24-50 Appeal will be dismissed where it has been withdrawn.
A-25876 Sac 039055, etc

6-28-50 Where an O&G lease issued subject to special stip. in which lessee agreed to begin drilling operations within 90 days, a request for an extension should be denied in absence of extraordinary circumstances which could not reasonably have been anticipated by lessee.

6-30-50 The Dept. has no authority to waive the payment of accrued rental after it has become a debt due the United States.

7-3-50 The Mineral leasing Act of 2-25-20 is not applicable to Indian reservation lands.

7-5-50 Alaskan Oil and Gas Leases -- Waiver or Suspension of Rental.
A-25867

7-5-50 Leasing tribal lands of the Pueblo of Laguna M-36040

7-6-50 Leasing Ceded Indian Lands -- Shoshone or Wind River Reservation.
A-25815 A-25817 A-25824

7-7-50 " " " " A-25880

7-12-50 The pref right granted in sec 1 of the act of 7-29-42, can be exercised only during the 90-day period immediately preceding the expiration date of the lease. A-25859 Denver 056807 O'Rear

7-25-50 Acquired land cannot be lease under the Mineral Leasing Act. Acquired land reserved for naval purposes is not subject to disposition under the Mineral Leasing Act for Acquired Lands, even though jurisdiction over the oil and gas deposits therein has been transferred to the Sec of the Interior. A-25846 BLM-A- 018045.

7-26-50 Premature filing of Preference Right Applns under act of 7-29-42
Where pref right appln is filed prior to commencement of 90-day period, and appln is not rejected but remains on file until after the beginning of that period, it thereupon becomes effective as a preference right appln on file within the 90-day period. M-36045

8-4-50 The facts that a prior appln had not been noted on the tract books at the time when a subsequent application was filed, and the subsequent applicant was informed by the manager that there was no conflict could not operate to deprive the first applicant of his priority.
A-25849 Sac 041079, 038602 Kahlow - Fisher

8-4-50 An appln for O & G leas on land patented without a reservation of O & G to the U. S. must be rejected. A-25891 LA 080740

8-7-50 Acquired Land Lease Modification of requirements A-25836

8-16-50 Receipt of registered mail offering lease - 30 day period - Applicant in hospital - secretary sick and absent from office - Receptionist who signed had no authority - Warwick M. Downing
A-25798 Salt Lake City 066007

8-16-50 When lease is issued on land for which final certificate without reservation of O&G has issued, and when patent with no reservation of O&G is issued after issuance of lease, the lease must be cancelled.
A-25871 Las Cruces 065350

8-23-50 Prior to Aug. 8, 1946, a relinquishment of a non competitive lease did not become effective until it was consented to, in writing, by the Secretary of the Interior.

8-23-50 The mailing of a relinquishment which is not received in the land office does not operate to terminate the lease. A-25894

10-20-50 Proration of Accrued Rental. The amount can be prorated on a monthly basis under the act of Nov. 28, 1943 (30 USC, 1946 ed. sec. 188a) only where it appears that the failure of the lessee to file a timely surrender of the lease prior to accrual of the rental was not due to a lack of reasonable diligence.

12-7-50 Mineral leasing of acquired lands - Reclamation project.
M-36051

12-12-50 Extensions where part of land is on structure - Drilling operations 2-year extension and 5-year extension A-25904 Pueblo 058636

12-28-50 A trustee may not acquire for the benefit of a minor any interest in an oil and gas lease, etc. BLM memo DL:ECD 2-28-50

12-29-50 An O&G lease will not be granted for land within a Wildlife refuge when the land is not subjected to an approved unit or cooperative paln.

12-29-50 The portion of sec 30a of the Act which provides that leases segregated by an assignment shall continue in force for not less than two years after the date of discovery of O&G in paying quantities is applicable to segregated leases which were outstanding on Aug. 8, 1946 irrespective of whether the discovery was made before or after 8-8-46.

1-16-51 Where an applicant changes his address without notifying the land office and a notice sent to address on file, requiring him to do something or have his application finally rejected, was returned undelivered, it was not erroneous to reject the application.
A-25905 Sac 033205 (Compare this with A-25798, 8-16-50)

1-16-51 The determination whether to issue leases on lands withdrawn for reclamation purposes is discretionary with the Dept. A-25927

1-23-51 A 10-year term lease is not subject to preference right under the act of July 29, 1942, or to a 5-year extension under sec. 17. Where a lease is committed in part to a unit agreement, only the portion of the lease committed is entitled to the 2-yr extension following the termination of the unit agreement provided for in sec. 17(b). A-25957.

1-25-51 Rules of practice relating to notices of appeal in contest cases do not apply to appeals in other types of proceedings.
In considering an appeal in a noncontest case, the Director may obtain and consider evidence which was not before the subordinate bureau official from whose decision the appeal was taken, and may decide the appeal on the basis of such evidence. In order to charge an addressee of undelivered registered mail with constructive notice of such mail, it is necessary that such mail must have been held in the post office for the full period of time directed by the sender, excluding the day on which it was received in the post office and the day on which the post office returned it to the sender.
A-25939 Caswell Silver Buffalo 039900 (See 1-16-51 A-25905)

2-5-51 Cancellation -- Surrender -- Waiver of Accrued Rentals.

2-7-51 When land applied for is included in a lease based upon a prior application, the subsequent appln should be rejected and not merely suspended. The inclusion in another lease of land applied for by subsequent applicant does not nullify such appln, but merely lays a predicate for its rejection. Where appln for land is included in a lease based on prior appln, and such lease is subsequently relinquished, and a lease is thereupon issued on subsequent appln, the circumstance that this appln should have been rejected during the interim does not make the lease void or voidable.

2-13-51 Extension by Production in paying quantities - Pref right appln.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

Sacramento 038522,
039175, 039076,
038513, 039236
"DL:JHT"

DECISION

SEP 23 1949

Charles R. Creighton :
vs. :
Evelyn Fisher :

Oil and gas

Appeal Denied
Manager's Decision Affirmed

By decision of July 1, 1949 (Sacramento 038522, 039175, 039076, 038513), the Manager, District Land Office, transmitted lease forms to Evelyn Fisher, for execution, for 2,415.97 acres, based upon her non-competitive oil and gas lease application, Sacramento 038522. At the same time the Manager rejected the lease application, Sacramento 039175, of Charles R. Creighton, because all the lands therein were embraced in the lease offer to Mrs. Fisher.

Creighton has appealed from the rejection of his application and has offered six specifications of error. These may be summarized in his contention that the Fisher application should have been rejected in its entirety as invalid because it embraced when filed, 4,178.71 acres, which is more than the 2,560 acres permitted by law and the regulations; that the lease for the lands in conflict should have been offered to Creighton because his was the only valid application on July 1, 1949; that Mrs. Fisher should not have been permitted to file in April and June, 1949, partial withdrawals of the excess acreage so as to bring her application within the acreage limitation; and that the Manager failed to follow the general rule set out in Bureau decisions of March 8, 1949 (Sacramento 039175) and March 29, 1949 (Sacramento 039236). Mrs. Fisher has filed a brief and argument to the effect that an application in excess of 2,560 acres is valid, although she is willing to accept the Manager's decision as it stands. Creighton has filed an answer to the argument.

The record shows that Evelyn Fisher filed her application Sacramento 038522, on January 16, 1948, for a non-competitive oil and gas lease for approximately 4,178.71 acres in T. 9 N., R. 26 W., S. B. M., California. The application was accompanied by Fisher's signed check, in blank, which she requested the Manager to fill in as soon as he had determined the proper amounts for filing fee and advance rental payments. (43 CFR 192.42)

The Manager, on the same day, January 16, rejected the application in its entirety, stating that "the maximum allowable

5G

acreage for any single oil and gas application is 2,560" acres, and returned the blank check. The applicant was advised that the rejection was without prejudice to her "right to file a new application for part of the lands embraced therein, the total acreage of which does not exceed 2,560". On January 29, 1948, Mrs. Fisher, through her attorney, Arthur C. Fisher, transmitted a check in an amount sufficient to cover the filing fee and advance rental. She also filed two applications Sacramento 038599 and 038601 which together covered all the land in 038522 and advised the Manager that these could be substituted for the original if the Manager wished to do so, as a matter of convenience. She also paid additional filing fees to cover the additional applications. Creighton filed his application, Sacramento 039175, on July 12, 1948, for 1,128.92 acres in conflict with Mrs. Fisher's applications.

Section 17 of the Mineral Leasing Act of February 25, 1920, as amended August 8, 1946 (30 U.S.C. sec. 226), as to lands not within the known geologic structure of a producing oil or gas field, provides that "the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding".

No question is raised as to the qualifications of applicant Fisher. The principal question to be determined, therefore, is the validity or invalidity, under the laws and regulations then in force, of an oil and gas application filed for more than 2,560 acres of land (rule of approximation excluded).

The only pertinent provision in effect in January 1948 was contained in Section 27 of the Act as amended in 1946 (30 U.S.C. sec. 184) and provided that "no person . . . shall take or hold at one time oil or gas leases exceeding in the aggregate 15,360 acres granted hereunder in any one State".

The new regulations governing oil and gas leasing under the 1946 amendments were contained in Circular No. 1624 approved October 28, 1946. Paragraph 192.40 thereof stated in part that "leases for not to exceed 2,560 acres . . . may be issued", and paragraph 192.42(d) required an application to contain a "description of the land for which *a lease* is desired". (Emphasis supplied.) In substance these regulations contain the same requirements as did the regulations in force prior to the 1946 changes, Circular No. 1386, Paragraph 192.23(d) which provided that the application shall contain "a description of the land for which a lease is desired which may not exceed 2,560 acres".

In view of the regulations in Circular No. 1624, therefore, the proper procedure, when "oversize" application 038522 was filed in

January 1948, was for the Manager to select a block of 2,560 acres for which a lease would be offered and to hold the application for rejection as to the excess acreage, but to allow the applicant a grace period of 30 days to select the acreage up to 2,560 acres which she wished to retain in the original application; any such selection, if timely made, could not be defeated by intervening applications filed during the grace period. The applicant should also have been informed that she could file separate applications for the excess acreage, if she desired, such new applications, however, to be effective only from the date of their filing and subject to any valid intervening applications. Of course, if the applicant did not respond within the 30-day period her application would be rejected as to the excess acreage and a lease would issue for the 2,560 acres specified in the prior decision.

As to the tender of payment of the required filing fees and advance rental by means of the signed check with the amount in blank, this, of itself, would not constitute non-payment so as to invalidate the application. Although the transmittal of blank checks is a bad business practice, there is no special rule prohibiting Managers from filling in the amounts due, when determined; and such apparently has been done by Managers from time to time as an accommodation to applicants.

Furthermore, and without regard to the foregoing, Mrs. Fisher, on January 29, 1948, in response to the Manager's improper rejection of her application in its entirety did file two substitute applications Sacramento 038599 and 038601, and paid sufficient fees and rentals. At this point, and since there were no intervening applications the Manager should have considered the new applications as a withdrawal of the original and should have rejected that application in its entirety, allocating the rental and filing fees to the new applications. For some reason not apparent from the record, both Mrs. Fisher and the Manager have chosen to disregard the substitute applications.

The Manager having failed to take the correct action on the original application when filed, and Mrs. Fisher having sufficiently reduced her application without a prior formal demand upon her to do so, by her partial withdrawals of April 25, June 24, and June 29, 1949, I find that she has conformed to the regulations and to the rule set out in the previous decision of this Bureau in the case of C. S. Glascoe et al, Las Cruces 065461, December 10, 1947.

Accordingly, the Manager's decision of July 1, 1949, offering a lease for 2,415.97 acres to Mrs. Fisher and rejecting Creighton's application Sacramento 039175 to the extent of the conflict therewith, is affirmed. Creighton's appeal is hereby denied

subject to his right of appeal to the Secretary of the Interior within 30 days from receipt of notice hereof. The Manager will serve Creighton by registered mail and Mrs. Fisher by ordinary mail. He will also take appropriate action, in due course, to complete the lease forms on 038522 and to close applications 038599 and 038601.

Referring to the decisions mentioned by Creighton, that of March 8, 1949 (Sacramento 039175) and March 29, 1949 (Sacramento 039236), as well as the decision cited by Mrs. Fisher, in the case of Robert M. Ervin, B.L.M. A-016347, February 8, 1949, these decisions to the extent they are inconsistent with the correct rule as set out above will not be followed in any future case.

The case records in 038522 and 039175 are returned with this decision.

Marion Clawson

Director

Attachments 2

"DL:ECD"

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

December 28, 1950

ELIGIBILITY OF TRUSTEE TO HOLD OIL AND GAS LEASES FOR MINOR CHILDREN

Oil and Gas Leases; trustees.

A trustee may not acquire for the benefit of a minor any interest in an oil and gas lease, or in an operating agreement or royalty pertaining to such a lease which the minor could not acquire directly.

Attachment

ABBT
S
SG

Copy to: Regions I, III, IV, V, II, VII — (15 EACH)
Solicitor's Office — (2)
Division of Adjudication — (25)
Region VI — (5)
Mr. Paulus, Geological Survey — (5)

"DL:EGD"

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

December 28, 1950

Memorandum

To: Regional Administrator, Region II

From: Director

Subject: Eligibility of Trustee for Minor Children - Oil and Gas Leases.

Reference is made to your regional counsel's memoranda of October 12 and December 8 inquiring whether a trustee for a minor, who is a trustee for several trusts for minors, may "invest" in oil and gas leases where each trust is a separate entity.

He refers to the Departmental decision of December 27, 1927 in the case of Jean Alling (52 L.D. 242) wherein the Secretary denied issuance of an oil and gas prospecting permit because the applicant was a minor. After a motion for rehearing was denied by the Secretary the case was carried into the courts and by decision of January 7, 1929 (West v. U.S., ex rel Alling, 30 F. 2d 739), the Court of Appeals of the District of Columbia held in effect that a minor may be regarded as qualified to receive a permit inasmuch as the leasing act and the regulations thereunder were silent as to whether a minor was qualified under the act. However, it was stated in the decision that in disposing of the case the Court was not expressing any opinion as to the powers of the Secretary to promulgate regulations that would exclude a minor from taking advantage of the act. A writ of mandamus was issued and on March 23, 1929 the Secretary issued the permit to Alling.

A minor, except a minor heir or devisee, is not qualified to hold a lease and an assignment to a minor will not be approved (43 CFR 192.140). The new non-competitive lease form 4-1163, published in the Federal Register on December 5 (15 F.R. 8582) which will go into effect in January, contains a space for the offeror to state whether he is over 21 years of age and item 9 of the general instructions accompanying the form provide for the rejection of an offer by a minor. However, from your reference to "invest", it is assumed that you are not referring to a trustee created under the will or other instrument of the holder of oil and gas leases who

dies and leaves minor heirs or devisees but that you have in mind a trustee, who under the State laws, possibly the act of March 15, 1947 (43d Session, Chap. 51), is authorized to invest funds of minors in oil and gas leases issued by the United States or in royalty interests or operating agreements pertaining to such leases.

Any assignment of an oil and gas lease, operating agreement or of a royalty interest in a producing lease must be approved by the Department or under authority delegated by the Department, before the assignment may become effective as against the United States so as to entitle the assignee to any returns from the lease, agreement or royalty interest. Of course no lease would knowingly be issued to a trustee acting in behalf of a person or persons who on account of being minors, or aliens, are disqualified under the mineral leasing laws and regulations from receiving or holding a lease; neither would approval be knowingly given to an assignment of a leashold or other interest to such a trustee. To do so would be in effect doing indirectly what may not be done directly under those laws and regulations. Also, such a trusteeship could be used as a means for the beneficiaries holding or acquiring interests exceeding the limitations imposed by the section 27, supra. In the case of Bank of America, National Trust and Savings Association, Executor of the Estate of William B. Beaizley, Sacramento 035598, the Department held February 14, 1947 that a lease could not be issued to the executor of the estate of a deceased lessee for the benefit of alien heirs, for in substance the issuance would amount to a violation of the leasing laws. The principle is equally applicable to a trustee holding for the benefit of minors.

What has been said above is applicable regardless of whether or not each trust is a separate entity. Should it come to the attention of this office that a party is acquiring interests in oil and gas leases, operating agreements or royalties, ostensibly in his own name and behalf but as a matter of fact for beneficiaries under some trust agreement who are not qualified to receive or hold leases or interest therein, an investigation will be made and if the facts warrant, steps will be taken toward ending the violation of the leasing laws and regulations thereunder. Attention is called to a provision in the section 27, supra, that "If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this Act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General."

William Zimmerman, Jr.

Assistant Director

ABBT
S
SG

Sacramento AD:CRD
043102 etc.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 19, 1951

043102 - George E. Kholer, Sr.
043131 - Wm. B. Lowry
043136 - Earl E. Madden
043140 - W. D. Crook
043141 - A. G. Daniels
043153 - Clyde H. Yothers
043154 - Donald S. Mateer
043155 - F. C. Steiner
043181 - Glenn H. Conrad
043182 - F. B. Irons and J. V. Taylor
043183 - Edwin A. Dygert
043193 - Norman E. Hall
043208 - Gertrude M. Webster
043214 - S. G. Knupp
043215 - Wm. L. Hoffman
043231 - Wm. H. Pursley
043269 - Darryl W. Herron
043325 - R. S. Dew and C. E. Baxter
043349 - L. E. Zamboni
043377 - Wm. E. and J. K. Starkey
043381 - T. C. Hanvie
043460 - Eleanor Lowry

Oil and Gas Applications

DECISION

:

Actions of Manager Affirmed

The above named parties have filed appeals, similar in nature, from decisions of the Manager dated October 13 and 16 and November 17, 1951, rejecting in whole or in part the listed oil and gas lease applications for the reason that the lands were within the San Rafael Primitive Area of the Los Padres National Forest. These actions were based upon adverse reports from the Forest Service to the inclusion of any of the lands involved in oil and gas leases.

Because of the appeals the Forest Service was requested to reconsider the question. It is brought out in a recent report that this primitive area was established in January 1932, under regulations of the Secretary of Agriculture and with the exception of 830 acres in private ownership it covers approximately 74,900 acres of land in Government ownership entirely within Santa Barbara County. This area was set aside at the request of the people of Santa Barbara County, as represented by a number of organizations for the purpose of maintaining it in as nearly primeval condition as possible.

The area has been maintained in such a manner and it is felt that surface activity as would be involved in oil and gas development would destroy some important public values of the area, its wilderness character would disappear and its scenic, recreational and wildlife values would be seriously impaired.

AD:CRD

In view of the above, this office is of the opinion that the actions of the Manager in rejecting in whole or in part the listed applications were proper and the decisions are affirmed subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of notice hereof by each party.

Director

Distribution
Manager - (25)
R.A., Region II - (2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C.

October 29, 1951

AUTHORITY OF OIL AND GAS LESSEE TO PERMIT USE OF LEASED AREA FOR LANDING AND TAKE-OFF OF AIRPLANES.

An oil and gas lease authorizes the lessee to permit use of a portion of the leased area for

(a) Landing and take-off of airplanes carrying officials and employees of the lessee or of his operator, or operating supplies and materials to and from the leased area.

(b) The construction and maintenance of strips on the leased area for the landing and take-off of such planes.

An oil and gas lease does not authorize the lessee or others to use a leased area for a public airport.

Attachment

ABACA
ABBCC
SG

Copy to: Regional Counsel, Regions 1, 2, 3, 4, 5, 7 - 15 each
Solicitor's Office - 2 copies
Division of Adjudication - 5 copies
Division of Land Planning - 10 copies
Chief Counsel's Office - 25 copies

"DL-#SCD"

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C.

October 29, 1951

Memorandum

To: Regional Administrator, Region V.

From: Chief Counsel

Subject: Authority of oil and gas lessee to permit use of leased area by airplanes.

Reference is made to your memoranda of September 19 and October 1 raising the question of whether an oil and gas lease authorizes the use of the leased area for the landing and take-off of airplanes used for transporting employees of the lessee who have been injured while engaged in operations on the leased area or airplanes used in conveying supervisors of such operations from one leased area to another.

Under section 1 of the lease form now in use, the lessee is authorized to use the surface of the leased area for whatever works or structures are necessary to the full enjoyment of the exclusive right and privilege to drill for, extract and remove any oil and gas deposits discovered. Oil and gas leases outstanding when the present form was adopted contain provisions similar to those in section 1 of the form now in use.

Obviously the lease authorizes the use of the surface for whatever structures or activities are needed in connection with the care and maintenance of the facilities used in discovering, extracting and storing of the oil and gas. The use of the surface of the leased area by planes carrying supervisors of oil and gas operations on a leased area to another leased area, also is within the scope of section 1 since supervision is clearly needed for oil and gas operations on each leased area. The same is true with respect to planes carrying other employees of the lessee, or carrying supplies and materials for use in connection with operations on the leased area, from one leased area to another.

Certainly the same rule would apply to the use of the surface for purposes closely related to the maintenance of the good health of the employees and of their fitness to carry on operations under the lease and who are as essential to those operations as are the drilling, extracting and storing facilities. Therefore, the use of the surface by planes carrying injured employees or officials to places where they can be promptly treated and taken care of, clearly comes within the scope of section 1 of the lease.

For the use of the airplanes referred to above, strips of concrete or of other material, may be constructed and maintained on a leased area.

Of course an oil and gas lease does not authorize the use of the surface of the leased area for a public airport.

Jacob N Wasserman
Chief Counsel

Approved:

Marion Clawson

Director

Min & Min Lands
4
4-5

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LAND OFFICE
SACRAMENTO, CALIF.
JUN 3 1952
A.M. 7|8|9|10|11|12|1|2|3|4|5|6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

DECISION

	:	Oil and Gas
Lessee:	:	Expiration date of lease:

Lease Extended

A timely application for an extension of the above noted oil and gas lease has been filed pursuant to the regulations 43 CFR 192.120, together with payment of the rental for the sixth lease year.

The lease is in good standing. The land was not within the known geologic structure of a producing oil and gas field on the expiration of its initial 5-year term nor withdrawn from leasing under the conditions specified in section 17 of the Mineral Leasing Act (41 Stat. 437, 30 U.S.C. sec. 226).

The term of the lease is extended for 5 years from the expiration date shown in the caption, and so long thereafter as oil or gas is produced in paying quantities.

Manager

copy to GS 3

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SACRAMENTO, CALIF.
NOV 25 1952
A.M. 7|8|9|10|11|12|1|2|3|4|5|6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D.C.

Los Angeles
087326
087326A
M:HKS

DECISION

November 18, 1952

DOCKET FILES

J. Michael O'Meara : Oil
Richfield Oil Corporation : and
Hartford Accident & Indemnity Company : Gas

Assignments Approved

Reference is made to oil and gas lease Los Angeles 087326 issued noncompetitively to J. Michael O'Meara under date of May 1, 1947, covering the NE¼ sec. 25, T. 11 N., R. 28 W., S.B.M., 160 acres. The operating rights on this acreage are held by Richfield Oil Corporation under an agreement dated June 13, 1948, and currently covered by its $25,000 nation-wide bond accepted effective September 7, 1951. That portion of the lease described as SW¼NE¼, W½NW¼NE¼, SE¼NW¼NE¼ and W½SE¼NE¼, 90 acres, is committed to the agreement for the Russell Ranch (Dibble Zone) unit area, approved effective September 1, 1950, under which discovery has been made. Only 40 acres of the lease described as SW¼NE¼ is within the limits of the known geologic structure of a producing oil or gas field, namely Russell Ranch field, undefined.

On June 17, 1949, there was filed for approval an instrument entitled "agreement of amendment and assignment" dated March 24, 1949, wherein O'Meara conveys to Richfield Oil Corporation all of his lease title reserving a primary overriding royalty of 5% and secondary overriding royalties totaling 19.125%, which latter royalties are subject to the limitations prescribed by sec. 192.83 of the oil and gas regulations. This agreement and assignment also terminates the outstanding operating agreement of June 13, 1948, as to certain paragraphs thereof and declares that the agreement as amended, be not deemed an operating agreement but constitutes an agreement between the parties with respect to their obligations and rights. Since the assignment was complete as of the date filed, it is hereby approved effective July 1, 1949, as required by the regulations (43 CFR 192.140).

Under date of January 15, 1951, the Richfield Oil Corporation filed assignments of its lease rights as follows:

1) Quitclaim dated October 27, 1950, by Richfield Oil Corporation reconveying to O'Meara the N½NE¼, SE¼NE¼, 120 acres.

2) Quitclaim dated October 27, 1950, by Richfield Oil Corporation reconveying O'Meara the NE¼SW¼NE¼, E½NW¼SW¼NE¼, NW¼NW¼SW¼NE¼, NE¼SE¼SW¼NE¼, 20 acres.

The assignment numbered 1 was also complete on the date filed and is hereby approved in accordance with the regulations cited, effective February 1, 1951.

Action on the assignment numbered (2) has been withheld under the last sentence of 43 CFR 192.140, which prohibits the assignment of a part of a legal subdivision unless the necessity therefor is established by clear and convincing evidence. In compliance with this regulation, the Richfield Oil Corporation filed showings as to its reasons for retaining the 20-acre balance of the leasehold, i.e. SW¼SW¼NE¼, SW¼NW¼SW¼NE¼, W½SE¼SW¼NE¼ and SE¼SE¼SW¼NE¼. The showing made, which involved unit agreement and operational methods, has been considered by the Geological Survey and based on its report of May 15, 1952, is deemed to constitute clear and convincing evidence of the need to subdivide the SW¼NE¼. However, before the assignment could be approved, O'Meara was required to file a $1000 bond pursuant to sec. 2(a) of the lease terms, since the 20 acres involved were within the geologic structure of a producing oil field. On October 3, 1952, O'Meara filed an acceptable $1000 bond executed September 29, 1952, by the Hartford Accident & Indemnity Company covering the entire 140 acres described in the two reconveyances above listed. Accordingly, assignment numbered 2 is hereby approved as of the first day of the lease month following the filing of satisfactory bond coverage, namely November 1, 1952. Counterparts of the approved assignments are attached for delivery to the respective assignees.

By reason of the approved assignments, the 20 acres now held by Richfield Oil Corporation are continued under serial 087326, the life of which as to this acreage will continue so long as the lease remains subject to the unit plan. However, the lands conveyed to O'Meara are of different status and must be segregated into separate leases as required by the oil and gas regulations (43 CFR 192.143) and unit plan regulations (30 CFR 226). Accordingly, the non-unitized lands, no part of which is on the known geologic structure of a producing field, are segregated into a new lease to be hereafter identified as Los Angeles 087326A and further described as follows: NE¼NE¼, E½SE¼NE¼, NE¼NW¼NE¼, sec. 25, T. 11 N., R. 28 W., S.B.M., 70 acres. Since the five-year term of the parent lease as to this acreage expired by operation of law on April 30, 1952, O'Meara's request for a five-year extension filed April 10, 1952, pursuant to sec. 192.120 of the oil and gas regulations is allowed only to the extent of this acreage. In connection with this request for extension, O'Meara paid the sixth year's rental on this 70 acres at the rate of 50¢ per acre.

The remaining 70 acres held by O'Meara, described as W½NW¼NE¼, SE¼NW¼NE¼, W½SE¼NE¼, NE¼SW¼NE¼, E½NW¼SW¼NE¼, NW¼NW¼SW¼NE¼, NE¼SE¼SW¼NE¼, are in part located within the limits of the Russell Ranch field, undefined, and because all of the acreage is committed to the unit agreement, the life of this segregated portion continues in effect so long as it is subject to the plan. In this connection the records further show that under section 2 of Article XIII of the unit plan, any part of this acreage which has not become a part of the participating area on or before September 1, 1952, will no longer be subject to the unit agreement; however, in the event this acreage is then excluded from the unit area, the life of the segregated portion will be extended for an additional period of two years or until September 1, 1955; (see sec. 192.122(b) and sec. 192.123 of attached Circular 1782).

In these circumstances, O'Meara's request for a five-year extension can not be granted as to the last described 70 acres, since the provisions of 43 CFR 192.120 do not apply, The Manager is therefore instructed to assign a new serial number to this portion of the parent lease (instructions of August 21, 1952, and October 27, 1952, re: segregation of leases committed to approved unit agreement), of which this office should be advised so that the records of this office may be properly noted.

For the Director:

Acting Chief, Division of Minerals

Attachments

Copy to: All parties named in caption.
G.S.(9)
L.O.(3)
R.A.(Reg.II)(3)
John F. Deeds

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D. C.

Sacramento
025613
M:HKS

November 21, 1952

Registered Mail

DECISION

Estate of H. R. Eyer : Oil
Oil Well Service Oil Company : and
Maryland Casualty Company : Gas

Assignment Approved. Forms of Renewal Lease Transmitted.

By office decision of May 18, 1950, action on an assignment involving record title and application for renewal lease in the above numbered case was suspended pending the filing of additional evidence necessary to complete the record for approval, the last of which evidence was filed on September 15, 1952. The record now appears in condition for processing as follows:

The lease involved is dated April 29, 1929, and embraces the S½NE¼ sec. 28, T. 26 S., R. 28 E., M.D.M., North Mt. Poso field (formerly part of lease 019598(a), record title to which stands in the name of H.R. Eyer under assignment approved by the Department June 2, 1941. The lease obligations are covered by lessee's $5000 bond executed April 14, 1941, by Maryland Casualty Company as surety. On March 9, 1948, there was filed for approval an assignment executed February 18, 1948, by lessee of all lease rights in favor of Oil Well Service Oil Company subject to previously approved reserved overriding royalties of 4-1/6th% to Poscal Petroleum Corporation and 7½% to M. A. Knapp. In addition to these overriding royalties, Eyer by separate agreement with the assignee also dated February 18, 1948, reserved an additional overriding royalty of 2½% which was amended by agreement of the same date reducing this percentage to 1% in the event Eyer procured from Knapp consent to reduce his 7½% reserved royalty to 6%. By letter agreement dated April 1, 1948, the holders of this royalty agreed to accept a 6% royalty in lieu of the original 7½%.

On December 30, 1949, assignee filed an acceptable $5000 bond executed April 28, 1949, by the Maryland Casualty Company as surety to cover the lease obligations. The assignee is shown to be a partnership and satisfactory evidence of the qualifications and holdings of all partners has also been filed.

On January 3, 1950, the assignee filed an application to renew this lease. As a condition precedent to approval of the lease transfer and issuance of renewal lease, the parties in interest were required to reduce the existing overriding royalties totaling 12-2/3%, which according to

field report were a burden on lease operations. In this connection there were filed agreements dated June 22, 1950, and July 7, 1950, wherein Poscal Petroleum Corporation and the Estate of H. R. Eyer, deceased, respectively agreed to certain reductions in royalties.

On September 15, 1952, assignee filed supplemental application for renewal submitting in support thereof additional quitclaim deeds dated July 7, July 9, July 15, 1951, and agreement of reduction dated April 10, 1952, from the holders of the Knapp overriding royalty, as a result of which evidence the outstanding royalties under this lease are now as follows:

Poscal Petroleum Corporation	-	1.645%
Imogene Eyer, Administratrix	-	.987%
Edna Buchner	-	.510%
Ada M. Crawford	-	.750%
TOTAL	-	3.892%

As the record now stands, the approval of the lease transfer is in order; however, the case file contains information that lessee Eyer passed away in December 1948, and in these circumstances, the assignment is approved effective as of the date of the proposed new lease, namely April 1, 1949, instead of the first of the lease month following the completion of the assignment as required by the regulations (43 CFR 192.140). The records have been noted and a counterpart of the approved assignment is attached for the assignee.

This action terminates the period of liability under Eyer's bond (#336185), effective as of the approval date of lease transfer, i.e. April 1, 1949, and the surety has been so advised by copy hereof sent to 634 South Spring Street, Los Angeles 14, California.

Field report shows that full compliance has been made with the operating regulations applicable to the lease. The lease term has not been extended by approved suspension of operations and production and the 20-year term thereof expired on April 28, 1949. The burdensome overriding royalties have been satisfactorily reduced or quitclaimed to the now recognized lessee and no objection appears to the issuance of the renewal lease requested. Three forms of such lease are attached for signature. Since the regulations require that the new lease be dated the first of the month in which the old lease terminated, Royalty Schedule "C" attached to the forms has been amended to provide that the royalty on production due the United States to and including April 28, 1949, shall be computed and paid on the basis of the royalty rate prescribed in the old lease. This amendment should be initialed by applicant. With the return of the signed forms, there should be furnished a new $5000 bond on or following the attached form, or in lieu thereof applicant may furnish consent of its surety on the bond dated April 28, 1949, to remain bound thereunder for the full term of the new lease.

In regard to sections 1(a), (b), and (c) of Schedule "C", Rentals and Royalties, applicable to the renewal lease requested, Geological Survey records show that the leased land was within the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946; that no discovery of a new oil or gas deposit has been made since May 27, 1941, by a well or wells drilled on the leased lands; and that the land is not committed to an approved unit agreement.

Thirty days from receipt of this decision are allowed the Oil Well Service Oil Company within which to comply with the above requirements, failing in which the application for renewal lease will be denied without further notice. This decision is subject to the right of appeal to the Secretary of the Interior within the time allowed. Any appeal must be filed in accordance with 43 CFR 221.75 and 221.76, Circular 1818, copy enclosed. Response hereto should be made direct to this office.

For the Director:

CR Duelius

Assistant Chief, Division of Minerals

Attachments

Registered copy to Oil Well Service Oil Co.,
with attachments.
Copy to: Maryland Casualty Co.
N.M. Todd & J.J. Baker
Borton, Petrini & Conron
G.S.(3)
L.O.
R.A.(Reg.II)

"RECEIVED
LAND OFFICE
LOS ANGELES, CALIF."
1955 AUG 12 AM 9:30

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 087490
formerly
Sacramento 037735
5.04g

August 4, 1955

Registered Mail
Return Receipt Requested

DECISION

Margaret V. Kahler
and
Bishop Oil Company

Oil and Gas

Lease Expired

On March 10, 1955 Margaret V. Kahler, proposed assignee and operator, by her attorney, John Lloyd Welbourn, filed an appeal from the decision of the Manager dated February 3, 1955, holding that oil and gas lease Los Angeles 087490, formerly Sacramento 037735, expired under its own terms December 31, 1953. The appeal is supported by a brief of the Bishop Oil Company, present record owner of the lease.

Noncompetitive oil and gas lease 037735 was issued as of January 1, 1949 to Margaret M. Travers and Marvin Chorum for the SW¼NE¼, sec. 10, T. 11 N., R. 28 W., S.B.M., for a period of five years and so long thereafter as oil or gas is produced in paying quantities. An assignment of the lease from Margaret M. Travers and Marvin Chorum to the Bishop Oil Company was approved May 19, 1949, effective February 1, 1949. On January 20, 1954 an assignment dated January 4, 1954 was filed from the Bishop Oil Company to Margaret V. Kahler, accompanied by a $5000 lease bond signed by M. V. Kahler. This assignment was denied by the Manager's decision of February 3, 1955 on the basis that the lease had expired on December 31, 1953.

On October 20, 1950 the Director, Geological Survey, reported the completion of the first productive oil well on the leased land, that production ceased in November 1951, and according to the record there was no production from the leased land nor any drilling operations in progress on December 31, 1953. On November 10, 1953 the Bishop Oil Company filed a request for a five year extension of the lease. The field, known as Morales Canyon, was defined August 21, 1952, which is still in full force and effect.

Appellant contends that she was not notified by the Bureau of Land Management of the defined structure and the records fail to show that such definition had been noted; that the Bishop Oil Company, record holder of the lease, had not been notified that the lease would expire December 31, 1953; that had such information been received, an application for relief would have been filed, as it was then impossible to move drilling equipment to the well site and make the necessary repairs for operations by December 31, 1953, because of bad roads; that commencing in January 1954, monthly reports showing the progress of work on the lease and royalty statements were filed with the Geological Survey; that not until August 18, 1954 was she informed in regard to the questionable status of the lease, and that a lease containing a well capable of production is not subject to termination by reason of cessation of production unless the lessee is given reasonable notice.

The appeal, and brief, together with the case record, were referred to the Geological Survey and on May 23, 1955, the Geological Survey submitted a report which shows that the first discovery was reported by memorandum to the Manager, Sacramento Land Office, October 20, 1950, and that plats showing the known structure were sent to the Manager, Los Angeles, California, August 21, 1952, and that the definition of the Morales Canyon field and others was published in the Federal Register September 20, 1952 (17 F.R. 8461). The report states that the Manager of Bishop Oil Company was orally informed about December 1, 1953 that unless the lease was restored to production it would expire December 31, 1953, and that the Manager was of the opinion the leaseholder would not make any effort to continue the lease production and had so informed the engineer of the Geological Survey, that on January 22, 1954 when a copy of designation of operator from Bishop Oil Company to Margaret V. Kahler was received, Margaret V. Kahler was informed by telephone that the lease was believed to have expired December 31, 1953; that on May 26, 1954, Margaret V. Kahler filed reports for January through April, which were the first notice to the Geological Survey that there were any actual operations by Margaret V. Kahler on the lease; that a consulting engineer of the drilling operator was informed in April 1954 by a representative of the Geological Survey in a telephone conversation of the expiration of the lease and that operations should not be started on the land, and in view of the repeated warnings given directly and indirectly to the appellant in the matter it was assumed that no operations were in progress. The report also shows that production on the lease prior to December 31, 1953 ceased in November 1951 and that no grounds appear on which the lease can be regarded as continued after December 31, 1953.

As shown above the leased land is within a known geologic structure and that a well was drilled on the land long before the expiration date of the lease. Section 192.121(a), 43 CFR, Circular 1840 is applicable. It reads: "Any noncompetitive lease or portion thereof which is not subject to a single extension of five years solely because the lands are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease shall continue in effect for a period of two years from the expiration date of the primary term of the lease where drilling are being diligently prosecuted on such date and, upon discovery, for so long thereafter as oil or gas is produced in pay quantities." The regulations cited is an interpretation of sec. 17 as amended by sec. 3 of the Act of August 8, 1946 (60 Stat. 950-1, 30 USC 226.) The regulations make it clear that an oil and gas leaseholder within a defined structure is entitled to a two-year extension provided drilling is being done thereon before the five-year term of the lease expires and was being prosecuted diligently when the five-year term expired.

From evidence available it appears the conclusion reached by the Survey that the lease did not continue after December 31, 1953 is proper. The appeal and brief in support thereof is without merit. The designation of operator did not reach the oil and gas supervisor's office until January 20, 1954, 20 days after the lease had expired. Moreover, the lessee's representative on or about December 1, 1953 informed the engineer of the Survey to the contrary and the lessee knew the status of the lease. Production on the leased area before December 31, 1953 ceased in November 1951, and any operations subsequent to December 31, 1953 were unauthorized and unapproved.

In view whereof the decision appealed from is affirmed. The lease is held to have expired December 31, 1953, which action will become final after 30 days from receipt of notice hereof by the lessee. The right of appeal is allowed. If an appeal is filed it must comply fully with the regulations contained in the attached copy of Circular 1818.

W. G. Guernsey
Associate Director

Enclosure: Circular 1818

Distribution:

Minerals Staff Officer 2
BLM Reading File
Appeals Unit 3
Attorney's Reading File
ASC
RLW
LO (Los Angeles)
SO (Calif)
Copy for record

In reply refer to:

Sacramento 047849
5.04g

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LAND OFFICE
SACRAMENTO, CALIF.
DEC 12 1955
A.M. 7|8|9|10|11|12|1|2|3|4|5|6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 21, 1955

Registered Mail
Return Receipt Requested

DECISION

Grace H. McNeil :
Gertrude M. Hall :

Oil and Gas

Decision of Manager Affirmed

Grace H. McNeil and Gertrude M. Hall have appealed to the Director from a decision of the Manager of the Sacramento Land Office, dated November 30, 1954. The decision appealed from held the appellants' oil and gas lease offer, Sacramento 047849, which was filed on December 30, 1953, for rejection. The reason given for this rejection was that a part of the lands applied for are in a 5-year oil and gas lease 047672 which was to be issued effective as of December 1, 1954, and that the remaining lands applied for were embraced in oil and gas lease 047699, which was to be issued as soon as a $1,000 bond had been filed.

Oil and gas lease offer 047672 was filed on November 4, 1953, and a lease was issued on December 1, 1954. Oil and gas lease offer 047699 was filed on November 16, 1953, and a lease issued on January 1, 1955.

The appellants in appealing from the Manager's decision base their appeal on the following grounds:

> "Oil and Gas Lease Sacramento 035669, by the decision of the Land Office, was cancelled October 27, 1953. On November 18, 1953, the lessees filed an appeal from the above cancellation decision. On August 18, 1954, a decision by the Bureau was rendered denying the reinstatement of the lease. By operation of law, Sacramento 035669 would have expired on December 31, 1953. In view of the fact that our offer Sacramento 047849 was made December 30, 1953, prior to the expiration of the lease by its own terms and that offers 047672 and 047699 were made during such time that the cancellation decision was subject to and in the process of appeal, we herewith request that our offer be reconsidered in accordance with the rules of practice as set forth by the Department of the Interior for the award of

"leases on public lands where more than one offer is made on or before the expiration of a prior lease."

On examining the records before this office on appeal, it appears that on October 27, 1953, the Manager of the Sacramento Land Office cancelled lease Sacramento 035669 for failure to pay the tenth year's rental due under the lease, and noted the tract book that same day as to the cancellation of this lease. By this same decision the Manager held the lessee under this cancelled lease liable for the tenth year's rental as an obligation due and owing the United States. At the time the tract book was noted as to the cancellation of this lease, the lands became subject to further oil and gas leasing to the first qualified applicant who made application for them. (43 CFR 192.43.)

The Manager of the Land Office properly cancelled oil and gas lease Sacramento 035669, and properly issued oil and gas leases 047669 and 047672 to A. E. Wright and Henry Hathaway, respectively, who were the first qualified applicants for the land. Therefore, the decision of the Manager dated November 30, 1954, rejecting the appellants' oil and gas lease application Sacramento 047849, is affirmed. The right of appeal to the Secretary of the Interior is allowed, in accordance with the regulations as contained in 43 CFR 221.75 and 221.76. See Circular 1818 attached.

Edward Woozley
Director

Attachment

Copy to: Appellants--(Registered Mail)
SO(California) 3
LO(Sacramento) 3
Minerals Staff Officer (2)
BLM Reading File
Attorneys' Reading File
Appeals Unit (12)
Case File
FSRD
GRH
AO-1
Each LO-3
Each SO-3
Each AO

In reply refer to:

Los Angeles 0128663
0128666
0128667
088842
5.04g

RECEIVED
LAND OFFICE
SACRAMENTO, CALIF.
DEC 20 1955
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 5, 1955

Registered Mail
Return Receipt Requested

DECISION

R. R. Templeton :
Donald C. Ingersoll :
Wilbur D'Arcy Rankin :
Signal Oil and Gas Company :
Fred Goodstein :
Loren L. Hillman :

Oil and Gas

Manager's Decision Affirmed

R. R. Templeton and two other individuals have appealed to the Director from a decision of the Manager of the Land Office at Los Angeles, California, dated September 6, 1955, rejecting their offers 1/ for oil and gas leases under the provisions of Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offers were rejected for the reason that the lands involved were covered by an application for extension of a prior oil and gas lease which had terminated. Such rejection was based upon a decision by the Acting Director dated August 12, 1955, in which he considered that the application for extension had been timely filed.

An answer to the appeals has been filed by the appellees.

The records disclose that an oil and gas lease (Sacramento 038552) was issued to Evelyn Fisher for a primary term of five years, beginning March 1, 1950. A partial assignment of the lease as to 480 acres by Evelyn Fisher to the Signal Oil and Gas Company was approved effective March 1, 1950. The assigned portion of the lease was given serial number Sacramento 042552. Thereafter, Fred Goodstein and Loren L. Hillman acquired certain undivided title interests in the lease from Signal Oil and Gas Company.

1/ Los Angeles 0128663, R. R. Templeton;
Los Angeles 0128666, Donald C. Ingersoll;
Los Angeles 0128667, Wilbur D'Arcy Rankin.

At the time when the partial assignment to Signal Oil and Gas Company was approved, the lands covered by lease 042552 were situated within the boundaries of the Sacramento, California, Land District. By Executive Order No. 10248 dated June 2, 1951, jurisdiction over a certain area which included the lands in lease 042552 was transferred from the Sacramento Land District to the Los Angeles Land District. The Executive Order which described the area involved in the change in boundaries between the two land districts, was published in the Federal Register (Vol. 16), and was effective June 16, 1951. Since lease 042552 was within the area over which jurisdiction was transferred to the Los Angeles Land District, the record of that lease was sent by the Sacramento Land Office to the Los Angeles Land Office for all further handling. After the lease was received in the Los Angeles Land Office, it was given a new serial number, Los Angeles 088842, for purposes of identification in the records of that office.

The primary term of lease 088842 expired at midnight February 28, 1955. An application for extension of the lease was received in the Sacramento Land Office on Monday, February 28, 1955, at 9:00 A.M. That office forwarded the application to the Los Angeles Land Office where it was received on the following day, March 1. The appellants filed their respective lease offers in the Los Angeles Land Office on March 1.

Section 17 of the Mineral Leasing Act, supra, read in pertinent part as follows, on the expiration date of the appellees' lease:

> "Upon the expiration of the primary term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record title holder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease within the known geologic structure of a producing oil or gas field or withdrawn from leasing under this section. * * * No extension shall be granted unless an application therefor is filed by the record title holder within a period of ninety days prior to such expiration date. * * * "

The Departmental regulation (43 CFR 192.120; 19 F. R. 9018) issued pursuant to this statutory provision provided in part:

> "The record titleholder of any noncompetitive lease * * * may, by filing his application therefor within the period of 90 days prior to the expiration date of the lease, obtain a single extension of the primary term of the lease for an additional five years * * * ".

In their appeals the appellants alleged that the Manager erred in rejecting their respective lease offers. They asserted as error the failure to hold that the lease of appellees (Los Angeles 088842) had terminated because an application for extension thereof was not filed in the Los Angeles Land Office within the 90-day period prescribed by statute. To support this contention the appellants cited the cases of *Mattie B. Kinsey, Margaret Kinsey Long*, A-27103 (August 22, 1955), and *Floyd Childress*, 61 I. D. 54 (March 7, 1955). Both of these cases may be distinguished from the situation which obtained in the present case. In the *Kinsey-Long* case the lessees on a Saturday, October 31, 1953, deposited in the mail slot of the door of the Los Angeles Land Office envelopes containing their applications for 5-year extensions of their oil and gas leases which expired on October 31, 1953. Since Saturday was a nonbusiness day, the applications were not considered filed until such time as they were received in the Land Office on the following Monday, the first business day in which the applications could be filed. Consequently, the *Kinsey-Long* applications were considered as not having been timely filed. In the *Childress* case an application for a 5-year extension of an oil and gas lease was delivered by mail to the Manager of the Santa Fe, New Mexico, Land Office at his home after business hours on a Friday. Since the lease expired at midnight on Sunday, the application for extension was not considered filed until the following Monday when the Land Office opened for business, even though it was physically delivered into the hands of the Manager before the expiration date of the primary term of the lease.

The appellees, in the present case, within the 90-day period prescribed by the above quoted statute and regulation, filed an application for a 5-year extension of their lease in the Sacramento Land Office. From the available evidence, as will be hereafter noted, it appears that the appellees were led to believe that the Sacramento Land Office was the proper office in which to file the application. The records reveal that during the years 1950 and 1951, the Manager of the Sacramento Land Office approved various instruments of transfer of operating interests and record title interests in the lease. Rental payments for the fourth and fifth lease years, which became due on March 1, 1953 and March 1, 1954, respectively, were remitted to the Sacramento Land Office and apparently were accepted by that office. The lessees were not notified by either the Sacramento Land Office or the Los Angeles Land Office concerning the transfer of their lease.

The appellants also asserted as error the failure to hold that the appellees received constructive notice of the transfer of jurisdiction over the lands embraced in their lease to the Los Angeles Land District by the above referred to Executive Order, and in failing to hold that the appellees received due notice that the lease was being handled by the Los Angeles Land Office when they received the fifth year's rental receipt bearing the notation "LA-088842 (SAC-042522)".

It is true, as contended by the appellants, that by publication in the Federal Register the appellees are charged with constructive notice of the change in the boundaries between the Sacramento and Los Angeles Land Districts. However, the course of dealing between the Sacramento Land Office and the appellees involving various actions in connection with their lease, prior and subsequent to the effective date of the Executive Order, operated to negative such constructive notice. Except for the Los Angeles designation followed by the Sacramento serial number appearing on the fifth year's rental receipt, the appellees had no notice that business concerning their lease was not properly transacted with the Sacramento Land Office. It appears, therefore, that a reasonable basis existed for belief by the appellees that their lease was being handled by the Sacramento Land Office when the application for extension was filed.

The appellees have expended a considerable sum of money to maintain the lease in good standing, and a careful review of the record indicates that they in good faith filed a timely application for extension in the office which they had reason to believe then had administrative jurisdiction over their lease. It further appears that this incorrect impression was abetted by the ready acceptance of the fourth year's rental in the Sacramento Land Office without the lessees having been informed in any way of the transfer of the case to the Los Angeles Office. To deny the application for extension in these circumstances would be unfair and inequitable. The Department has long adhered to the policy of applying principles of administrative fairness in cases where such equitable principles should be exercised in order to do justice. S. J. Hooper, A-26976 (Supp.) (October 28, 1954; Bassie v. Chapman, 59 I. D. 235.

It is our conclusion, therefore, that the appellant's lease offers were properly rejected, and the decision of the Manager is affirmed.

The decision of this office is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of same. If an appeal to the Secretary is filed, it must conform to the Rules of Practice contained in the Circular No. 1818.

Acting Director

Attachment

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Wilbur D'Arcy Rankin, w/c Circ. 1818--(Registered Mail)
Signal Oil and Gas Company--(Ordinary Mail)
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Loren L. Hillman--(Ordinary Mail)
AO-1; SO(Sacramento) (3); LO(Los Angeles) (3); BLM Reading File;
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E. C. Finney, Attorney at Law

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Washington 01227
02212
01361

December 6, 1955

DECISION

Miss Ethel Severson

Oil and Gas
Withdrawals

Decision of Manager Reversed in Part

On February 8, 1954, the Agricultural Research Service, United States Department of Agriculture, made application W-01227 to withdraw the NW¼NE¼, Sec. 34, T. 12 N., R. 21 E., W.M., to be used as a site for the Moxee Plant Introduction and Quarantine Station.

On March 22, 1954, the above applicant requested withdrawal of their application, and that the matter of withdrawing the land be turned over to the State of Washington Department of Agriculture. On July 20, 1955, the State of Washington Department of Agriculture through its Director filed application W-02212 for the withdrawal of the NE¼, Sec. 34, T. 12 N., R. 21 E., W.M.

By decision dated July 1, 1955, an oil and gas lease was offered to Ethel Severson for all of the lands embraced in her offer W-01361, except the NW¼NE¼, Sec. 34, which had originally been applied for by the U. S. Department of Agriculture, Agricultural Research Service, and the offer was rejected to that extent.

On July 27, 1955, an appeal from this decision was filed by the Attorney-in-Fact for Ethel Severson, the offeror of oil and gas lease W-01361, asking that the lease offer be suspended pending final action on the proposed withdrawal, and if the withdrawal had been granted, that a lease be issued with provisions to protect the surface use of the NW¼NE¼ of Sec. 34.

The withdrawal, W-02212, has not been approved and the action of the Manager in partially rejecting oil and gas lease offer W-01361 prior to final action being taken on the withdrawal was not proper. The regulation 43 CFR 295.10 provides that "* * * action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken."

The Manager's decision of July 1, 1955, is therefore reversed as to the partial rejection of the appellant's oil and gas lease offer. Action should be withheld on the issuance of the oil and gas lease pending the final disposition of the pending withdrawal W-02212.

[illegible] Falck
Acting Director

Distribution:

Miss Ethel Severson
Dept. of Agriculture, State of Washington
Agriculture Research Service, Dept of Agric.
AO-1
SO (Washington) (3)
LO (Spokane) (3)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 050592
036093
5.04g

January 10, 1956

Registered Mail
Return Receipt Requested

DECISION

Kenneth Benzer, Administrator
of the Estate of Maude Benzer

Oil and Gas

Manager's Decision Affirmed

Kenneth Benzer, as Administrator of the Estate of Maude Benzer, by his attorney, has appealed to the Director from a decision of the Manager of the Land Office at Sacramento, California, dated June 8, 1955, in so far as it rejected his offer (Sacramento 050592) to lease under the provisions of Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected for the reason that the land involved was embraced in an outstanding lease.

The records disclose that oil and gas lease Sacramento 036093, dated June 1, 1945, was issued to the Capital Company for an initial period of five years. It was extended for an additional five years from June 1, 1950, and so long thereafter as oil or gas is produced in paying quantities. No production in paying quantities having been obtained within the period of the lease as extended, the lease expired by operation of law at Midnight, May 31, 1955. An application for extension of this lease for an additional five years and a separate offer to lease the same land were filed by the appellant at 9:00 A.M., on May 31, 1955.

Section 17 of the Mineral Leasing Act, as amended, provided in pertinent part as follows on the expiration date of the Capital Company lease:

> "Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, * * *. No extension shall be granted, however, unless within a period of ninety days prior to such expiration date an application therefor is filed by the record titleholder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval."

The Departmental regulation (43 CFR 192.120, 19 F. R. 9278) issued pursuant to this statutory provision, states in part as follows:

> "(a) Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part shall be entitled to a single extension of the lease at the expiration of the initial five-year term unless otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval."

The appellant does not claim nor does the record disclose that the Estate of Maude Benzer was the record title holder of the lease or an assignee under an assignment filed for approval, or an operator under an operating agreement filed for approval. Moreover, under the quoted portions of the statute and regulations, only a single five-year extension of a noncompetitive lease may be granted. It is clear, therefore, that the appellant was (1) not a proper party to file an application for a 5-year extension and (2) the lease in question was not subject to any further extensions.

In his appeal the appellant asserts that his offer to lease was in the Bureau's possession the "first minute after midnight of May 31, 1955, and that from that point on it became an effective offer and was, in fact, the first offer of lease of the property described therein." This argument, in effect, is that a premature application which is not rejected prior to the date of the expiration of a prior lease survives as a continuing valid offer.

To regard the appellant's offer as acquiring validity immediately after the expiration of the prior lease would not accord equality of opportunity to all qualified persons to file applications after the land becomes available once more for disposition. George B. Friden, A-26402 (October 8, 1952); California and Oregon Land Company v. Hulin and Hunnicut, 46 L.D. 55 (1917). An application filed at a time when the land is not subject to application is void ab initio and cannot become valid thereafter even though the land may become subject thereto.

For the reasons indicated, we are of the opinion that the appellant's lease offer was properly rejected, and the Manager's decision is therefore affirmed.

The decision of this office is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of same. If an appeal to the Secretary is filed, it must conform to the Rules of Practice contained in Circular No. 1818.

Edward Woozley
Director

Attachment: Circular No. 1818

Distribution:

Cy H. Lemaire, Atty. for appellant, w/Circ. 1818 (Registered Mail)
Kenneth Benzer (Ordinary Mail)
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A.M. 7 8 9 10 11 12 1 2 3 4 5 6 M.

In reply refer to:

Los Angeles 088434
088450
087866
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 7, 1956

Registered Mail
Return Receipt Requested

DECISION

Halvor F. Holbeck :
Del Grant :

Oil and Gas

Decision of Manager Affirmed

Halvor F. Holbeck has appealed to this office from a decision dated February 4, 1955, of the Los Angeles Land Office which dismissed a protest he had submitted against issuance of a lease pursuant to application Los Angeles 087866 (formerly Sacramento 039381) filed August 19, 1948, by Del Grant for, among other lands, the lands involved in Mr. Holbeck's applications Los Angeles 088434 (formerly Sacramento 041252) and 088450 (formerly Sacramento 041287), which were completed on December 18, 1950. He based his protest upon the ground that application Los Angeles 087866 covered lands greatly in excess of a six-mile square area, in violation of existing regulations and of announced policy in the Land Office at the time the application was filed.

The record shows that Mr. Holbeck appealed also from decisions dated December 7, 1950 and January 3, 1951 of the Sacramento Land Office, which rejected his applications on the basis that the lands could not be identified by existing official plats of survey; however, it appears that these decisions have been vacated to this extent by letter dated June 8, 1954 from the Manager of the Los Angeles Land Office to Mr. Holbeck, advising that the lands were found to exist as a hiatus between two townships and that his applications would be adjudicated in due course.

The protested application involves lands lying in a hiatus between Ts. 10 and 11 N., Rs. 26 and 27 W., S.B.M., California, the approximate area of which comprises 2,280 acres and the east-west length of which extends approximately 8-3/4 miles.

P.O

At the time Mr. Grant's application was filed, the pertinent Departmental regulations were contained in Circular 1624, approved October 28, 1946 (43 CFR 192.40), which provided for issuance of leases for areas not to exceed 2,560 acres, in reasonably compact form, and in Circular 1624a, approved June 6, 1947 (43 CFR 192.40), which provided as follows: "No single lease will be issued embracing lands which cannot be included within a six-mile square area. Where an application covers tracts which cannot be so contained two or more leases, as may be necessary, will be issued. The right is reserved to suspend, or reject in whole or in part, applications involving scattered tracts considerably more than six miles apart."

The situation here is similar to that presented to the Department in the matter of Levi A. Hughes et al (61 I.D. 145), decided April 28, 1953, wherein the Department held that the regulation as contained in Circular 1624 imposed no duty upon an applicant to contain the lands applied for within a six-mile square and that the regulation as amended by Circular 1624a made it plain that an application for lands which could not be contained in a six-mile square was not fatally defective but allowable, unless it embraced scattered tracts "considerably more than 6 miles apart." The Department stated, even in that event, the right to suspend or reject the application in whole or in part was reserved to the Department. The Department noted in the decision referred to that a mandatory requirement that an application for lease must be confined to land which could be included in a six-mile square was not adopted until the revision of the regulations of November 29, 1950, which became effective January 28, 1951, and that these revised regulations provided that all applications filed prior to the effective date of the regulations would be processed in accordance with the regulations in effect immediately prior to such date.

It therefore appears there is no Departmental regulation applicable to the application which would require its rejection because it includes lands that cannot be contained in a six-mile square. On the contrary, since the area applied for constitutes a contiguous tract, the application is considered valid under the regulations in effect at the time it was filed.

With respect to the appellant's statements that Land Office personnel were advising applicants at the time his offer was filed that offers would be rejected where they included lands in an area exceeding a six-mile square, it is stated that neither the Land Office nor this office has authority to waive or modify regulations prescribed by the Department, and any such actions would not be binding upon the Department. cf. R. M. Harris, A-26215 (July 24, 1951).

There appears to be no basis for disturbing the action of the Manager, and his action is therefore affirmed.

This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from notice hereof. Any appeal filed must conform to the requirements outlined in the attached Circular 1818.

Acting Director

Attachment

DISTRIBUTION:
Mr. Halvor F. Holbeck (Registered Mail)
Mr. Del Grant (Regular Mail)
Each AO (1)
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In reply refer to:

Los Angeles 089439 et al 1/
5.04g

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1956

Registered Mail
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DECISION

J. G. Hatheway et al 1/ : Oil and Gas

Manager's Decision Affirmed

Mr. Hatheway and six other individuals 1/ appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office at Los Angeles, California, dated October 17, 1951, which rejected their respective oil and gas lease offers covering lands on San Nicholas Island off the southern coast of California. 2/

The lease offers were rejected for the reason that by Executive Order of January 31, 1933, San Nicholas Island was placed under the control and jurisdiction of the Secretary of the Navy for naval uses, and that the Navy Department on October 8, 1951, had advised "that the present military use /of the island/ prohibits the consideration of oil and gas leasing."

In their appeals the appellants contended that the nation's known oil and gas reserves were being greatly depleted in fulfilling its world commitments, that in the best interests of the nation all potential sources of oil and gas should be explored in the furtherance of our National economy, and that since the lands applied for have not been excluded from the operation of the Mineral Leasing Act of February 25, 1920, as amended, leases should be issued pursuant to their offers.

1/ The names of the offerors and the serial numbers of the offers are listed on the attached Appendix "A."

2/ Action on the appeals was suspended pending completion of negotiations between the Interior Department and the Navy Department as to the feasibility of exploring for oil and gas on Nicholas Island pursuant to the lease offers filed.

The records disclose that during the year 1952 continued efforts were made by the Department of the Interior to obtain the consent of the Navy Department to the issuance of oil and gas leases, and that such leases if issued would carry whatever conditions and stipulations were required by the Navy Department for the protection of their operations. The position of the Navy Department has remained unchanged, and in a letter of November 26, 1952, it informed the Interior Department that "naval operations on the island were of such importance to the National defense as to render utterly out of the question any commercial operations on the island at this time."

We are now advised that the Office of Naval Petroleum and Oil Shale Reserves has engaged the Geological Survey to examine into the oil bearing possibilities of the area and that if a satisfactory report is received the Navy expects to drill and if oil is found it will endeavor to have the area set aside as a naval petroleum reserve. So long as this situation exists it is felt that the Bureau should not, if it could, issue leases for any of the area.

Moreover, it has always been the policy of the Department to reject applications (and offers) filed for lands which at the time were withdrawn and reserved for uses inconsistent with entry. *Atlantic and Pacific Railroad Co. v. Fisher*, 1 L. D. 392, 393. That rule still applies. Thus, even though the Mineral Leasing Act applies to lands withdrawn under the act of June 25, 1910, as amended (43 U.S.C., sec. 141, et seq.), provided the purpose of the withdrawal is not inconsistent with mineral leasing, an objection by the agency for whose use the land was withdrawn is sufficient to bar leasing. *Noel Teuscher*, et al., A-27104, A-27192, May 31, 1955. In the circumstances to permit the present offers to continue as pending offers is administratively undesirable and might well be unfair to other prospective applicants if and when the withdrawal is vacated or the prohibition against leasing is otherwise lifted.

Accordingly, the action of the Manager in rejecting the offers was proper, and his decision is therefore affirmed.

The decision of this office is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of same. If an appeal to the Secretary is filed, it must conform to the Rules of Practice as contained in 43 CFR 221.75 and 221.76.

Edward Woozley
Director

(See page 3 for distribution)

Copy to: Each Appellant, with Circ. 1818 (Registered Mail)
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Each LO (3)
Alaska OS
Minerals Staff Officer (3)
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JBP
Area Counsel (Anchorage) - 2
Land and Minerals Officer (Anchorage) - 2
District Manager (Juneau) - 2

APPENDIX "A"

Los Angeles 089439 - J. G. Hatheway

" 089440 - D. R. MacPherson

" 089441 - W. R. Pagen

" 089442 - C. L. Cameron

" 089443 - Gaye Bjornsen

" 089444 - John P. Hurndall

" 089445 - R. J. Kerr

In reply refer to:
Los Angeles 089120-W
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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SACRAMENTO, CALIF.
SEP 4 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

August 28, 1956

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DECISION

	:	
Walter F. Wolfinger	:	Oil and Gas
	:	

Action of Manager Affirmed

Walter F. Wolfinger has requested this office to review the action of the Manager, Land Office, Los Angeles, California, in refusing to accept his remittance for $10.00 rental for the sixth lease year under a requested extension of his oil and gas lease Los Angeles 089120-W, on the basis of a determination that the request for lease extension was not timely, the lease having expired by operation of law on May 31, 1956. The Manager's ruling was furnished Mr. Wolfinger by letter of June 7, 1956. Mr. Wolfinger, through his attorney, Patrick H. Fenton, suggests that the action in the circumstances involved in this case may have been arbitrary.

A review of the record discloses that the lease, created by assignment of a portion of lease Los Angeles 089120-F, is a portion of original lease Los Angeles 089120 which was issued pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), for a primary term of five years and so long as oil or gas is produced in paying quantities. No discovery of oil or gas having been made on the leasehold, the primary term of the lease expired on May 31, 1956.

A postal money order for $10.00 was received in the Land Office, Los Angeles, California, on June 1, 1956, in an envelope postmarked May 28, 1956, Cedar City, Utah, with a return address noted thereon of Walter Wolfinger, Cedar City, Utah. This payment was returned by the Land Office on the day on which it was received, with a notice to Mr. Wolfinger that the office was unable to identify the item for which the payment was tendered and if the money was in payment of an amount due the Government that it should be resubmitted with adequate identification. Mr. Wolfinger returned the money order with a letter received in the Land Office on June 7, 1956, identifying the payment as rental under oil and gas lease Los Angeles 089120-F (sic). The office again returned the remittance, stating it was unacceptable since lease Los Angeles 089120-W expired by operation of law on May 31, 1956 and an application for extension should have been filed prior to that date, to entitle the lessee to an extension of the lease.

Although the letter containing the remittance initially submitted to the Land Office was postmarked May 28, 1956, it was not received in the Land Office until June 1, 1956. It is a well-settled rule that posting of a communication does not constitute delivery of that communication to the Land Office; it must be actually received in the Land Office. Theora A. Gerry, Lexa Oil Corporation, A-26319 (October 3, 1951). As noted above, the offered payment was not received prior to the expiration date of the lease, May 31, 1956.

Nor was there received prior to the expiration date of the lease any request for lease extension, as provided for in the law and pertinent regulation (30 U.S.C., 1952 ed., Supp. II, sec. 226; 43 CFR 192.120). In this connection the law provides:

> "Upon the expiration of the initial five-year term of any noncompetitive lease * * * the record title holder thereof shall be entitled to a single extension of the lease * * *. A noncompetitive lease, as to lands not within the known geologic structure of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. * * * No extension shall be granted, however, unless within a period of ninety days prior to such expiration date an application therefor is filed by the record titleholder. * * *"

On May 4, 1956, in the case of Arthur L. Rankin, A-27308, the Deputy Solicitor of the Department of the Interior ruled, in reference to the quoted provision, that: "The statute is plain: no extension can be granted unless an application is filed prior to the expiration date of the lease. The Secretary of the Interior is powerless to grant an extension if a timely application therefor is not timely filed."

While the regulations prescribe the filing of a formal application for extension within 90 days prior to the expiration date of the lease, on forms for that purpose in current use by the Department (43 CFR 192.120 (b)), they provide also in subsection (c) thereof that an informal request for lease extension within the prescribed time will entitle the lessee to a notice allowing him 30 days within which to submit formal request for lease extension on the necessary official forms or reproductions thereof. The tendered payment received in the Land Office after the expiration date of the lease cannot be considered as a timely informal request for lease extension.

The action of the Manager in returning the offered payment and in denying the request for lease extension was correct, in accordance with the law and the regulations, and his action is affirmed.

The right of appeal herefrom to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

Charles P. Mead

Acting Director

Attachment

DISTRIBUTION:

Mr. Patrick H. Fenton, Attorney at Law (Registered Mail)
Mr. Walter F. Wolfinger (Regular Mail)
Hon. Arthur V. Watkins
Hon. Henry A. Dixon
Minerals Staff Officer (5)
Geological Survey (6)
Mr. John Sieker, Forest Service, Dept. of Agriculture (7)
Appeals List No. 1

affirmed A-27481
1-28-58

In reply refer to:

Los Angeles 0136260 et al 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 3, 1956

Registered Mail
Return Receipt Requested

DECISION

Marie E. Tuttle, et al. : Oil and Gas

Manager's Decisions Affirmed

Appeals to the Director have been filed from the decisions dated May 22, 1956, of the Manager, Land Office, Los Angeles, California, which rejected oil and gas lease offer Los Angeles 0136260 and 21 other similar lease offers because the Geological Survey had reported that the lands in this area (Ivanpah Valley) were not known or believed to contain oil and gas deposits and that expenditures of time and capital in search for oil and gas in the area would be futile, uneconomic and unwarranted.

Appellants have submitted a copy of a well log dated June 1, 1940, and a copy of a statement dated April 10, 1940, by R. W. Wardell who said that he had been employed in the drilling and producing departments of several oil companies for more than 20 years; that a well in the Ivanpah Valley was commenced in 1940, drilled to a depth of 2211 feet, and at various depths showings of oil and gas were encountered which led him to believe that commercial production is possible when the well is completed. T. N. Ferguson, in a copy of a statement (apparently made in 1940) said that he had been employed in the oil fields for more than 20 years, and that he actually saw oil and gas bubbles in goodly quantity on a ditch in the Ivanpah Valley. L. C. Burrows, in a copy of a statement (apparently made in 1940) said that he had been employed as an operator of drilling equipment, and that at a test well in the Ivanpah Valley he observed very positive evidence of the existence of both oil and gas in the formation penetrated.

1/ The names of the offerors and the serial numbers of their offers are listed on the attached Schedule A.

The appellants have submitted no evidence that the wells referred to were ever completed, or any evidence of a recent date to refute the findings of the Geological Survey.

As pointed out in the decisions of May 22, 1956, the Geological Survey reported as recently as May 1, 1956, that these lands are not knowmer believed to contain oil and gas deposits. In instructions dated April 18, 1942, from the Assistant Secretary of the Interior the policy of the Department opposed the issuance of oil and gas leases in the Ivanpah Valley area. The Geological Survey has reported that the conditions providing the impetus for the above policy, are unchanged and no justification exists for modifying the restriction.

In the appeals it is suggested that some oil and gas leases had issued for lands in this area and for that reason the appellants feel that the Manager's decisions of May 22, 1956, should be reversed and that leases should be issued to the appellants. The records show that some leases were issued embracing lands in this area. The fact that leases have been erroneously issued in this area does not warrant the issuance of other leases in the area in violation of Departmental policy. Leases issued contrary to an outstanding administrative order but not in violation of any provision of the Mineral Leasing Act may not be cancelled. L. N. Hagood (60 I.D. 462); S. J. Hooper (61 I.D. 346, 354). The Department's power to cancel noncompetitive oil and gas leases after their issuance is limited. One proper basis for the cancellation of a lease is that the requirements of the statute governing the issuance of such leases have not been satisfied. Russell Hunter Reay v. Gertrude H. Lackie, A-24670 (August 12, 1947). A lease may also be cancelled if the lessee fails to comply with the provisions of the statute, the applicable regulations, or the terms of the lease, and such default continues after notice has been given (43 CFR 192.161). None of these grounds for cancellation are available with respect to the leases referred to by the appellants.

Therefore, based on the above, the appeals are considered to be without merit and the Manager's decisions of May 22, 1956, are affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeals are taken they must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each appeal. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

Edward Woozley
Director

Attachment

Distribution:
Each appellant represented by attorney (Regular mail)
Other appellants (Registered mail)
Mr. Robert S. Stedman, Attorney at Law (Registered mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (7)
PAS
Appeals List No. 1

SCHEDULE A

Name	Serial Number
Marie E. Tuttle	Los Angeles 0136260
C. R. Croy	Los Angeles 0136261
Donald E. Edwards	"
Lester E. Felieu	"
Charles Cutenese	"
Vincent D. Kennedy, Sr.	"
Luis E. Villalpando	"
Elvin E. Yoakum	"
Lucile O. Tuttle	Los Angeles 0136262
Edward H. Baele	Los Angeles 0136263
Donald K. Boice	"
D. L. Boice, Jr.	"
D. L. Boice, Sr.	"
Robert D. Hart	"
Angeline Giuliany	"
Walter C. Jones	"
E. O. Kieselhorst	"
Lucien A. Pepin	"
Robert E. Tuttle	"
William C. Tuttle	"
R. W. Wardell	"
William A. Fike	Los Angeles 0136264
Walter B. Hawkins, Jr.	"
Elmer Jessie	"
Robert J. Lightcap	"
Elvin E. Yoakum	"
Lelabell H. Yoakum	Los Angeles 0136265
Mrs. D. K. Boice	Los Angeles 0136266
L. M. Magor	"
Howard H. Magor	"
Rolland W. Wardell	Los Angeles 0136281
Elvin E. Yoakum	Los Angeles 0136332
C. R. Croy	Los Angeles 0136333
Peter J. Mahoney	"
Robert S. Stedman	"
Angeline Giuliany	"
Raymond N. Harris	"
Alfred J. Pett	"
Leonore Wormington	"
Lyle D. Travis	"
Walter C. Jones	Los Angeles 0136409
Wayne E. Reitz	"
Dale W. Richards	"
Louis M. Teggatz	"
Angeline Giuliany	Los Angeles 0136511

Name	Serial Number
V. C. Tinkens	Los Angeles 0136587
Betty Ingie	"
Will E. Arendt	Los Angeles 0136588
Ariene San Pedro	"
Richard Van Daele	Los Angeles 0136663
F. O. Kiesel Horst	Los Angeles 0136708
J. R. Fantz	Los Angeles 0136711
Lucile I. Hall	"
Betty Ingle	"
Hance W. Thornton	"
Lucile L. Hall	Los Angeles 0136712
Wallace T. Lindstrom	"
Walter B. Hawkins, Jr.	Los Angeles 0136797
George W. Van Fossan	Los Angeles 0136891
J. E. Richey, Jr.	"
Elvin E. Yoakum	"
George W. Van Fossan	Los Angeles 0136892
J. E. Richey, Jr.	"
Elvin E. Yoakum	"
George W. Van Fossan	Los Angeles 0136893
J. E. Richey, Jr.	"
Elvin E. Yoakum	"

In Reply Refer To:

Los Angeles [illegible]
[illegible]

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
WASHINGTON 25, D. C.

[illegible] 1958

DECISION

[illegible]
[illegible]

[illegible] : Oil and Gas

[illegible]

[illegible]

[illegible]

[illegible]

no appeal to Sec

In reply refer to:

Los Angeles 089120-G
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 4, 1957

DECISION

Registered Mail
Return Receipt Requested

James O. Grimm : Oil and Gas

Decision of the Manager Affirmed

Mr. James O. Grimm has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated July 26, 1955, rejecting the purported assignment of his non-competitive oil and gas lease Los Angeles 089120-G for the reason that the lease had been previously cancelled and the case closed on May 31, 1954, and accordingly appellant had no assignable interest remaining in the lease.

The records disclose that oil and gas lease Los Angeles 089120-G, embracing the $N\frac{1}{2}NE\frac{1}{4}$ Sec. 29, T. 10 N., R. 28 W., S.B.B.M., California, consisting of 80 acres, was created by a partial assignment out of lease Los Angeles 089120-A. The assignment was approved effective August 1, 1953. By the expressed terms of the assignment the appellant agreed to be bound by the terms of the original lease effective June 1, 1951.

Section 2(a) of the lease provided that a $1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the duedate of the next unpaid annual rental, but that this requirement could be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date. The appellant was required to file bond under this provision of the lease on March 1, 1954, or instead, to pay rental for the fourth lease year on that date.

On February 16, 1954, a notice was mailed to the appellant at # 3 Lufberry Circle, Wherry Housing, Las Vegas, Nevada, his address of record, requesting him to either furnish a $1,000 bond as required by sec. 2 (a) of the lease, or make payment in the amount of $20.00 representing the rental due on the 80 acres contained in the lease at 25 cents per acre for the fourth lease year from June 1, 1954 through May 31, 1955. The letter was returned by the Post Office as "unclaimed". On March 26, 1954 a default notice was sent to appellant by registered mail at the same address, which notice stated that if default with respect to furnishing the required bond or payment of the fourth year's rental continued for thirty days from receipt of the notice the lease would be cancelled without further notice. The record shows that a registry receipt for the default notice was signed by Mrs. James Grimm on April 22, 1954, as the appellant's agent, however, the notice was returned to the Post Office with the notation, "Opened By Mistake Mrs. James Grim". The notice was then returned by postal authorities to the Land Office with the notations, "Unknown", "Moved, left no address". On May 31, 1954 the lease was cancelled since neither the bond nor the payment of annual rental under the lease had been received.

One year later, on May 31, 1955, there was filed a purported assignment of the lease 089120-G, by the appellant to Jimmie Fukuzaki. This instrument, which again showed appellant's address to be #3 Lufberry Circle, Wheery Housing, Las Vegas, Nevada, was rejected by the Manager's decision of July 26, 1955.

In his appeal the appellant stated that he was out of the country when the notices were mailed to him on February 16, 1954 and March 26, 1954 and, therefore, he had not been properly notified of the rental due; that both the postal authorities and the assignor from whom he had acquired lease 089120-G knew his forwarding address; and that he had been misinformed as to the due date of the next rental payment by written instructions received from his assignor.

At the time the lease was cancelled the lessee had not complied with section 2 (a) of the lease which required the filing of a bond, or instead, the payment of advance rental on or before March 1, 1954. The lease was not cancelled until more than 30 days after the appellant had been mailed a default notice to his address of record. Section 31 of the Mineral Leasing Act, as amended (30 U.S.C. 1952 ed., Supp. III, sec. 188), a Departmental regulation issued pursuant thereto (43 CFR, 1949 ed., 192.161), and section 7 of the lease provide, with respect to lands not known to contain valuable deposits of oil and gas, that when a lessee does not comply with any of the provisions of the lease, the lease may be cancelled after notice to thelessee by registered mail, if default continues for 30 days after service of notice thereof. The cancellation of the lease after failure of the lessee to comply with a provision of the lease was in accordance with section 31 of the Mineral Leasing Act, with section 7 of the lease and with the above-referred to regulation. Cf. L. P. Glasebrook et al., A-27332 (August 7, 1956).

The mailing of the default notice by registered mail to appellant's address of record and the receipt of the notice by Mrs. James Grimm on behalf of the appellant constituted service of notice as comptemplated by section 31 of the Mineral Leasing Act, supra, and the above cited regulation and lease provision. Cf. Warnick M. Downing, 60 I. D. 433. The fact that Mrs. Grimm returned the notice to the Post Office and it was not personally received by the appellant would not excuse his failure to file the required bond or pay the advance rental. It was his responsibility to keep the office handling his oil and gas lease advised of his current address at which he could be reached for transacting his business, and the consequences of his failure to do so must rest on him. cf. Cornell N. Shelton, A-26441, October 17, 1952).

Furthermore, the statements contained in the instructions from appellant's assignor are statements of private persons for which the Department cannot be responsible.

For the above reasons the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Edward W. Woozley
Director

Attachment

DISTRIBUTION:

Mr. James O. Grimm (Registered Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service, U. S. Dep't. of Agriculture (7)
CLS
Appeals List No. 1

9716

Reversed A 27466
9-24-57

Sacramento 052828
052998
053027
053028
5,068

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 11, 1957

Registered Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas
:
:

Appeals Dismissed

Duncan Miller has appealed to the Director of the Bureau of Land Management from the decisions of the Manager of the Land Office at Sacramento, California, dated October 25, and November 1, 1956, which rejected in their entirety his above-numbered offers to lease for oil and gas purposes filed under the Mineral Leasing Act, as amended (30 U.S.C. 1952 ed., sec. 226).

The next to the last paragraph of the Manager's decision is in each case in part as follows:

> "You are allowed thirty days from notice hereof in which to appeal to the Director of the Bureau of Land Management. An appeal must be received in this office within the 30 days from receipt hereof, accompanied by a $5.00 filing fee. Further compliance is required with 43 CFR secs. 221.1 to 221.5 inclusive, and to other pertinent sections of the Rules of Practice. See the information sheet attached...." (Emphasis supplied).

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "...The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

The next section of the Rules of Practice, section 221.3 is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98...."

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director...will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;...."

Appellant filed a notice of appeal in each case on November 26, 1956. A statement of reasons should have been filed for each case not later than December 26, 1956, the thirtieth day after the notices of appeal were filed. The notices of appeal were not filed until December 27, 1956. No request was made for an extension of time in which to file the statement of reasons as provided for by section 221.97 of the Rules of Practice. The appeal cannot be considered and is therefore dismissed. Gerhard Evenson, 63 I. D. 331 (1956).

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee in each case. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by

Circular 1962, effective October 4, 1956. See Information Sheet attached. 1/

For the Director:
John B. Piccolo

Attachment

Distribution

Duncan Miller (Registered Mail)
Minerals Staff Officer (3)
Geological Survey (12)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (7)
Appeals List No. 1
CCS
L. N. Hagood (Regular Mail)
Thomas Connell (Regular Mail)
Richard R. Thorup (Regular Mail)
Lester C. & Alpha L. Hotchkiss (Regular Mail)

1/ In the event of an appeal, the adverse parties to be notified are:

L. N. Hagood
502-503 Wyoming National Bank
Post Office Box 966
Casper, Wyoming

Thomas Connell
453 So. Spring Street
Los Angeles 13, California

Richard R. Thorup
512 Ellis Street
King City, California

Lester C. & Alpha L. Hotchkiss
4239 Tyler Street
Fresno, California

appeal to Sec

affirmed A-27464
7-[illegible]·57

In reply refer to:

BLM-A 039208 (Los Angeles)
039209
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 17, 1957

Registered Mail
Return Receipt Requested

DECISION

Donald M. Snow Warren L. Meeker	:	Oil and Gas Acquired Lands

Manager's Decision Affirmed

Donald M. Snow, for himself, and Warren L. Meeker, through his attorney, have filed separate appeals to the Director from the decisions of the Manager, Land Office, Los Angeles, California, dated June 1, 1955, which rejected their respective applications for a noncompetitive oil and gas lease, each for the E$\frac{1}{2}$NE$\frac{1}{4}$NE$\frac{1}{4}$, sec. 29, T. 5 S., R. 11 W., S.B.M., California (Also known as Lots 1, 2, 3 and 4 of Block 20, Tract 26, Coast Boulevard Farms, recorded in Orange County, California), filed pursuant to the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 1952 ed., sec. 351 et seq.).

Offer BLM-A 039208 filed by Mr. Snow was received in the Bureau of Land Management on December 23, 1954, at 8 A.M. Offer BLM-A 039209 filed by Mr. Meeker was received in the Bureau of Land Management on December 23, 1954, at 10 A.M. Mr. Meeker is also protesting the lower serial number and earlier filing time of Mr. Snow's offer.

Both offers were rejected on the grounds that the record showed the land embraced in the applications was situated within the known geologic structure, undefined, of the Huntington Beach field on December 23, 1954, the date of filing of the applications, and was therefore not subject to noncompetitive leasing under applicable law and regulation.

One of the issues in the appeals is whether the land applied for was situated within a known geologic structure of a producing oil or gas field on December 23, 1954. The appellants contend that the land was not a part of the Huntington Beach field as such field was known to exist on December 23, 1954. Mr. Snow's contention is uncorroborated, whereas, in support of his contention Mr. Meeker has submitted statements of others showing that the productive zone of the wells completed in the vicinity of the land in question is different from the productive zone of the Huntington Beach field.

The Geological Survey has been asked to comment on the data suppled by Mr. Meeker. In a memorandum dated October 17, 1956, the Acting Director of the Geological Survey stated as follows:

> "* * * Such claim is supported by a letter from the State of California, Division of Oil and Gas, which states in part, 'This area is separated from the proved productive portion of the Huntington Beach field by a line of non-productive wells, commonly referred to as 'dry holes', and is therefore considered to be a new pool or field, not pressure connected with or subject to drainage from the old field.' (underscoring added). The appeal is further supported by a statement from Mr. Robin Willis, Registered Professional Engineer, which states in part, '... any oil accumulation north or east of these two wells would of necessity be situated on a geologic structure distinct from that of the Huntington Beach field and separated from it by a syncline or a major fault...'. (underscoring added)
>
> "From the above statements highlighted by the underscoring, it can be seen that both parties recognize that the area under consideration is on a separate structure and is considered to be a new field or pool. Therefore, the facts indicate the lands to be within a productive area properly classified as being within a known geologic structure, and the question as to whether this productive area was actually a part of the Huntington Beach field is moot. Inasmuch as it was within a known productive area at the time of filing is sufficient justification for the classification."

The land involved was acquired by the United States and as such is subject to leasing only under the terms of the Mineral Leasing Act for Acquired Lands, *supra*. Section 3 of the act provides that oil and gas deposits in such lands shall be leased by the Secretary under the same conditions as contained in the mineral leasing laws (43 CFR 200.1). The pertinent provisions for leasing oil and gas deposits are in section 17 of the Mineral Leasing Act of 1920, as amended

(30 U.S.C. 1952 ed., secs. 226, 189). Section 17 states in part:

> "* * * When the lands to be leased are within any known geological structure of a producing oil or gas field they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations * * *. When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding * * *."

Departmental regulation 43 CFR 192 6 places the duty of determining the boundaries of known geologic structures of oil and gas fields upon the Director of the Geological Survey. The Department has held that the Geological Survey's definition of a producing oil or gas field will not be disturbed in the absence of a clear showing that the definition was improperly made. Lillie Mae Yates, A-26271 (February 8, 1952). It does not appear from the evidence that a clear showing has been made that the Geological Survey's determination that the land involved was within the boundaries of a known geological structure of a producing oil or gas field on December 23, 1954, was erroneous and improperly made. Under the circumstances there does not appear to be any substantial basis for changing the Manager's decision on this issue. Stanolind Oil and Gas Company, A-27326 (July 12, 1956).

Aside from the foregoing, another issue, more basic, is whether the land is leasable under the Mineral Leasing Act for Acquired Lands, supra, which excludes from leasing thereunder certain lands, including lands "set apart for military or naval purposes", and lands "reported as surplus under the Surplus Property Act of October 3, 1944, (58 Stat. 765, 50 U.S.C. 1611 et seq.)", as amended. At the time the appellants filed their applications, the land was under the jurisdiction of the Department of the Army for military purposes, which, as the Manager indicated in his decision, was a further ground for rejection of the applications. That Department acquired the land from the General Services Administration for military purposes. More recent information discloses that, since the land was not suitable for the use intended, it was declared excess to the needs of the Army and it is intended to make the land available for disposal through the General Service Administration. Consequently, under the exclusions specified in the Acquired Lands Leasing Act, the land is not leasable under that act.

When these lands are ultimately placed under the jurisdiction of the General Services Administration they will be available for disposal under the provisions of the Surplus Property Act, as amended, *supra*, and regulations of that Administration.

In view of the above, it is obvious that a discussion relating to where and when a noncompetitive oil and gas lease offer is properly filed for priority purposes, is unnecessary.

Mr. Meeker requested a hearing. Since the factual data necessary to properly determine the issues on appeal are based upon matters of official records, the appellant's request for a hearing under 43 CFR 221.6 of the Rules of Practice is denied. *R. J. Walter*, A027243 (March 15, 1956), *Leonard E Noren, Harry C. Perry*. A027147 (August 1, 1955)

Accordingly, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee (in each case). Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal the adverse parties to be served are:

Donald M. Snow
4310 Beverly Boulevard
Los Angeles 4, California

Warren L. Meeker
737 General Petroleum Building
612 South Flower Street
Los Angeles 17, California

Edward Woozley
Director

Attachment

DISTRIBUTION:
Mr George W Henderson, Attorney for Appellant, (Registered Mail)
Mr. Warren L. Meeker (Regular Mail)
Mr. Donald M Snow, (Registered Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr John Sieker, Forest Service, U S Dept. of Agriculture (7)
Each Case File
Appeals List No. 1
WHW

no appeal to Sec

In reply refer to:

Sacramento 048790
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 31, 1957

DECISION

Robert G. Lynn : Oil and Gas

Decision of Manager Reversed

Mr. Robert G. Lynn has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Sacramento, California, dated October 1, 1954 rejecting his oil and gas lease offer (Sacramento 048790) under the provisions of Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226) for the reason that the land included in the offer was not a part of the public domain.

The offer was for an unsurveyed island described by metes and bounds, lying within the boundaries of the Sacramento River, which has been determined to be a navigable river (66 Cal. 138, 4 P 1152). The island when surveyed will probably be portions of the SW¼SW¼ sec. 3, NW¼ sec. 10, T. 29 N., R. 3 W., M.D.M., California.

On November 21, 1951, a Cadastral Engineer of this Bureau reported 1/ that a field examination of the island in question was made in September 1951, and that it was ascertained that the island, now known as Reading Island, had been in existence in 1850 when the State of California was admitted into the Union and has continued to exist at all times since. It having been determined that the island has the status of public land, instructions for an official survey of the island have been issued.

It is well established that islands in a river which were in existence above ordinary high water mark prior to the admission of a State into the Union remained the property of the United States until disposed of by the Federal Government. See Emma S. Peterson, 39 L. D. 566 (1911); Status of Islands in the Arkansas River, etc., 54 I. D. 222 (1933); State of Washington, 57 I. D. 228 (1940).

1/ Copy of the report is filed in Group 425, California

For the above reasons the Manager's decision of October 1, 1954 is reversed. The record is returned to the Manager through the Bureau's State Supervisor for issuance of lease if all else is regular.

Earl J Thomas

Acting Director

DISTRIBUTION:

Robert G. Lynn (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service
  U. S. Department of Agriculture (7)
CLS
Appeals List No. 1
SO (Sacramento) with case record
  Sacramento 048790

no appeal

r

In reply refer to:

BLM-A 036114 (Calif.)
Los Angeles 0126906
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

February 12, 1957

St. Anthony Oil Corporation :
Raymond C. Turnbull :

Acquired Lands
Oil and Gas Lease Offers

Manager's Decision Modified;
Rejection of Lease Offers Affirmed.

The St. Anthony Oil Corporation and Raymond C. Turnbull have filed separate appeals to this office from a decision dated July 18, 1955, of the Manager, Land Office, Los Angeles, California, which rejected their respective oil and gas lease offers BLM-A 036114 and Los Angeles 0126906, submitted under the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359), for certain acquired lands of the United States comprising the Veterans Administration Center, Los Angeles, California, and two adjacent parcels lying easterly thereto, formerly Veterans Administration lands, a total of approximately 713 acres. To the extent the lease offers involved approximately 678 acres comprising the present Veterans Administration Center, the Manager's ruling was that the lands could not be leased under the Act cited because the Administrator of Veterans Affairs, the head of the agency having jurisdiction over the lands, had determined that drilling or exploration for oil and gas deposits on the site would be incompatible with the utilization of the property for hospital purposes, and to the extent the applications included the two parcels adjacent to the Veterans Administration Center, one of which contains approximately .344 acres and the other approximately 34.808 acres, the Manager held that the lands are situated within the City of Los Angeles and are excepted from leasing under the Act cited by section 3 thereof for this reason.

Information of record verifies the status of the lands as recited in the Manager's decision, namely (1) that the lands applied for which comprise the Veterans Administration Center, Los Angeles, California, were acquired by the National Homes for Disabled Volunteer Soldiers by purchase, donation, and exchange on various dates beginning in the year 1888 and pursuant to Public Law 536, 71st Congress, approved July 3, 1930, were transferred to the Veterans Administration by Executive Order 5398 of July 21, 1930; (2) that the parcel of approximately

.344 acres lying easterly of Veteran Avenue and northerly of Wilshire Boulevard was deeded by quitclaim deed by the Administrator of Veterans Affairs under the authority of Public Law 37, 79th Congress, approved April 23, 1945 (59 Stat. 55), to the City of Los Angeles, for fire station purposes, without mineral reservation but with provision for reversion of the lands to the United States under certain stated conditions; and (3) that the parcel of approximately 34.808 acres was deeded by the Administrator of Veterans Affairs to the State of California for use of the University of California as a research and medical center, under the authority of Public Law 726, 80th Congress, approved June 19, 1948 (62 Stat. 559), which provided for reservation, however, to the United States all interest in and to any oil, mineral or fissionable materials in the lands and for reversion of the lands to the United States if they should cease to be used as a medical and research center. With respect to the lands comprising the present Veterans Administration Center, the Manager's decision recites further that these lands are unincorporated Los Angeles County territory, surrounded by the City of Los Angeles, and as to the other two parcels involved in the applications, that these are within the City of Los Angeles, having been included therein by Westgate Addition No. 2, Ordinance No. 100680 of January 7, 1953.

The St. Anthony Oil Corporation contends in its appeal that the lands are potentially valuable for oil and gas, that it is incompatible with public interest to permit them to remain undeveloped, and that the development thereof proposed by the corporation would be conducted in such manner as not to interfere with the operation of the Veterans Center or in any way to be injurious to the residents and users of the Center. The record shows that representatives of the St. Anthony Oil Corporation have presented their views on the proposed exploration and drilling program of the corporation to officers of the Veterans Administration in Los Angeles and in Washington, D. C.

In his appeal Mr. Turnbull advises that he also conferred with representatives of the Veterans Administration to demonstrate how he would conduct operations on the lands applied for in a manner compatible with the operation of the property as a hospital. A detailed explanation of his proposed development of the lands is supplied in his appeal and supplemental data submitted in connection therewith.

Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., sec. 352), provides in part:

> " *** all deposits of *** oil, *** gas *** which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated

"cities, ***) may be leased by the Secretary /of the Interior/ under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. *** No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposits *** ."

The Department has held in the case of D. Miller, A-27378, decided October 15, 1956, that the words of the statute clearly exclude from the operation of the Act oil and gas deposits in acquired lands situated within incorporated cities. It was held by the Department that the matter of whether or not the lands are in the "city proper" is immaterial if the lands are within an incorporated city; in other words, if the lands are located within the corporate limits of a city, they cannot be leased under the Mineral Leasing Act for Acquired Lands.

Accordingly, the lands here involved being situated within an incorporated city are not leasable under the terms of the Mineral Leasing Act for acquired lands. Furthermore, under the present status of the .344 acre parcel of land adjacent to the Veterans Administration Center, the United States does not have any leasable interest in the oil and gas deposits therein.

The only authority which this Department has over the oil and gas deposits in the lands comprising the Veterans Administration Center is the implied authority which is vested in the Executive Branch of the Government to take protective measures in cases where lands owned by the United States and not subject to the mineral leasing laws are found to contain oil and gas deposits which are being drained by adjoining owners. 40 Op. Atty. Gen. 41. In the exercise of this authority, it is in the public interest to offer lands believed to be within the known geologic structure of a producing field for leasing on a competitive basis. A. P. Scott, A-25846, July 25, 1950.

The decision of the Manager is modified in accordance with the finding made herein that all of the lands applied for are excluded from leasing under the terms of the Mineral Leasing Act for Acquired Lands.

The right of appeal herefrom to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee in each case. Strict compliance must be made with 43 CFR secs. 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

It is noted that the St. Anthony Oil Corporation withdrew its lease offer BLM-A 036114 to the extent of the two parcels lying adjacent to the Veterans Administration Center by instrument executed December 19, 1956, and filed in the Land Office, Los Angeles, on December 26, 1956. Also filed for record on the same date, with request for approval, were triplicate counterparts of an assignment of the lease offer and of any lease which may be issued pursuant thereto, from the St. Anthony Oil Corporation to Mr. John A. Woodward. In view thereof, a copy of this decision will be supplied Mr. Woodward for his information.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. J. D. Wolfsohn, Attorney of the firm of Chapman & Wolfsohn, Attorneys at Law, Pennsylvania Building, Washington 4, D. C., by registered mail, for St. Anthony Oil Corporation.
Mr. Norman B. Frost, Attorney of the firm of Frost & Towers, Attys. at Law, Southern Building, Washington 5, D. C. (Regular Mail)
St. Anthony Oil Corporation (Regular Mail)

Mr. Raymond C. Turnbull, 822 Moraga Drive, Los Angeles 49, California (Registered Mail)

Minerals Staff Officer (5)
Geological Survey (6)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
Each case file
FAP
Hon. H. V. Higley, Administrator, Veterans Administration, Washington 25, D. C

affirmed A 27503
1-3-58

In reply refer to:

Los Angeles 053732
053732-A
0144335
0144336
0144337
0144339
0144542
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

March 28, 1957

Justin S. Snow
Raymond J. and Harold J. Hansen
Duncan Miller
Sawyer Exploration Company
Thomas Connell
Mary C. Hagood

Oil and Gas

Manager's Decision Modified

Appeals to the Director, Bureau of Land Management, have been filed by Justin Snow (Los Angeles 0144335), Raymond J. and Harold J. Hansen (Los Angeles 0144336), Duncan Miller (Los Angeles 0144337), Sawyer Exploration Company (Los Angeles 0144339) and Thomas Connell (Los Angeles 0144542) from the decision of the Manager, Land Office, Los Angeles, California, dated October 31, 1956, rejecting their noncompetitive oil and gas lease offers, simultaneously filed on October 1, 1956, for the NE¼ sec. 20, T. 11 N., R. 20 W., S.B.M., California, pursuant to Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. 1952 ed., sec. 226).

The appellants' lease offers were rejected for the reason that the lands applied for are embraced in outstanding oil and gas lease, Los Angeles 053732.

The Manager disclosed in his decision that lease Los Angeles 053732, embracing the above-described quarter section and other lands, issued as of October 1, 1946, to Mary C. Hagood for a period of five years and so long thereafter as oil or gas is produced in paying quantities and that the lease term was extended from October 1, 1951, for an additional period of five years and so long thereafter as oil or gas is produced in paying quantities. On May 24, 1955, a partial assignment by Mary C. Hagood of lease 053732 as to all the lands except the NE¼ of sec. 20 was approved effective June 1, 1955, and the assigned acreage was segregated into lease Los Angeles 053732-A. On October 8, 1955, oil in paying quantities was discovered in the assigned lands. The decision further stated that in view of the discovery on the assigned portion, the retained portion of the lease is considered extended 2 years from the date of discovery under Section 30(a) Act of February 25, 1920, as amended; 43 CFR 192.144.

The reasons for appeal are, in substance, that the Manager erroneously further extended the retained portion of the lease under Departmental regulation 43 CFR 192.144 and that lease Los Angeles 053732 should have terminated on September 30, 1956.

Under the Departmental Rules of Practice (43 CFR 221.4, 221.95 and 221.98) appellants are required to serve notice of appeal on the adverse party and submit evidence of service of notice not later than 15 days after filing an appeal. The proper evidence of service of notice of appeal upon an adverse party served by certified or registered mail is the return receipt requested. Failure to furnish satisfactory proof of service of notice of appeal is a cause for summary dismissal of the appeal. Carl V. Giem, Harvey Bros., Intervenors, A-27299 (May 31, 1956; Lee R. Ormiston, A-27355 (May 14, 1956). The appellants, Justin S. Snow and Duncan Miller, have not submitted a return receipt as proof of service of notice of their appeals upon the adverse party, Mary C. Hagood. Accordingly, their appeals are dismissed.

The appeals of the remaining appellants will be hereinafter considered.

The question involved is whether the assignment of an undeveloped part of an oil and gas lease which is in its extended five-year term has the effect of continuing the retained portion of the lease for a period of two years from the effective date of approval of the assignment and so long thereafter as oil or gas is produced in paying quantities.

The pertinent section of the Departmental regulations under which the Manager rendered his decision is:

> "Sec. 192.144 Extension of leases segregated by assignment. (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.
>
> "(b) Undeveloped parts of leases assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years, and so long thereafter as oil or gas is produced in paying quantities."

This regulation must be construed in the light of sec. 30(a) of the Mineral Leasing Act of February 25, 1920, as amended by the Acts of August 8, 1946 (60 Stat. 955) and July 29, 1954 (68 Stat. 585).

The effect of a partial assignment made during the extended five-year term is covered by the following language of sec. 30(a), as amended:

> " *** Any partial assignment of any lease shall segregate the assigned and retained portion thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. *The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter* as oil or gas is produced in paying quantities." (Emphasis added.)

The final two sentences of this section of the act constitute the amendment provided in the Act of July 29, 1954, *supra*.

Solicitor's Opinion M-36398 (December 14, 1956), on this very matter considers the construction of sec. 30(a) and its effect upon an approved partial assignment of an oil and gas lease in its extended five-year term. In his opinion the Solicitor stated, in part:

> " *** Upon its approval, the assigned and the retained portions of the lease will be segregated into separate leases; and, since all the lands in both the assigned and retained portions are undeveloped, each portion will become a segregated lease of undeveloped lands. As I interpret the above-quoted provisions of the leasing act, each will then 'continue in force and effect for two years and so long thereafter as oil or gas is produced in paying quantities.'
>
> "It is my opinion that the language of the act in its reference to '[The] segregated lease of *any* undeveloped lands ***' must be said to apply to *all* segregated leases of undeveloped lands regardless of whether they constitute the assigned or the retained portions of the original lease. Sec. 30(a) of the Act, as above, states that: 'Any partial assignment of any lease shall segregate the assigned *and the retained portions thereof* ***; and such *segregated leases shall****.' Thus, the applicable section of the act itself

> "refers to both the assigned and the retained portions of an assigned lease as being 'segregated leases' and there is nothing to indicate that the later reference in the same section to a 'segregated lease' was used in a more limited sense. Further note is taken of the fact that the provision of the act which was amended in 1954 provided only for the extension of undeveloped assigned portions of leases which were in their extended term because of production (60 Stat. 955), while the amendment (68 Stat. 585) from its very nature would also apply to leases which were in their extended terms for other reasons and which might or might not have production. Therefore, the use of the word 'any' necessarily must be read as though it were 'all.' "
>
> "The express language of the act is clear on the question which has been raised. It must therefore be concluded that upon approval of the partial assignment of [an] oil and gas lease ***, both the assigned and the retained portions will constitute segregated leases within the meaning of the last sentence of sec. 30(a) of the act and will continue thereunder for a minimum of two years and so long thereafter as oil or gas is produced in paying quantities. However, the leases segregated by such partial assignment are not to be viewed as being limited to continuance for two years in cases where the term of the base lease would continue for a longer period. In such cases the term of the segregated leases would be co-existent with the term of the base lease. Solicitor's Opinion, M-36278 (May 31, 1955)."

Briefly, the 1946 amendment which provided for the continuance of leases in their extended term expressly limited its application to those leases in their extended terms because of production. The 1954 amendment provision was made for the assignment and extension of leases "in their extended term because of any provision of this act." It also provided that segregated leases of any undeveloped lands would continue for two years and so long thereafter as oil and gas is produced in paying quantities. In the light of the foregoing it must be conceded that the approved partial assignment out of lease Los Angeles 053732 while in its five-year extended term continued both the assigned and retained portion of the lease for two years from the effective date of approval of the assignment, and so long thereafter as oil or gas is produced in paying quantities.

The Manager by his decision extended the retained portion of lease Los Angeles 053732 for two years from October 8, 1955, the date of discovery of oil in paying quantities on the lands in assigned lease 053732-A. Although the decision indicated that such determination was under the authority of sec. 30(a) of the Mineral Leasing Act, _supra_, and 43 CFR 192.144, there was no reference as to whether subparagraphs (a) or (b) of the latter was applicable. Nevertheless, the decision relied upon subparagraph (a), applicable to leases in their primary term only, whereas the lease of Mary C. Hagood, Los Angeles 053732, was then in its extended five-year term. This being so the case would fall within the 1954 amendment to sec. 30(a) of the act (68 Stat. 585; 43 CFR 192.144(b)), and the retained portion then being a "segregated lease of undeveloped lands" would continue for two years from June 1, 1955, the effective date of approval of the assignment. _Solicitor's Opinion_, M-36398, _supra_. The Manager's decisions 1/ should have continued lease Los Angeles 053732 through May 31, 1957, rather than through October 7, 1957. As a consequence, the Manager's decisions 1/ are hereby modified to that extent.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse party to be served with notice thereof is Mrs. Mary C. Hagood, Post Office Box 966, Casper, Wyoming.

Carl J. Thomas
Associate Director

Attachment

DISTRIBUTION:
Mr. Justin S. Snow (Registered Mail)
Messrs. Raymond J. and Harold J. Hansen (Registered Mail)
Mr. Duncan Miller (Registered Mail)
Sawyer Exploration Company (Registered Mail)
Mr. Thomas Connell (Registered Mail)
Mrs. Mary C. Hagood (Regular Mail)
Minerals Staff Officer (6); Geol. Survey (21);
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
Each Case File
WHW

1/ Decision of October 5, 1956 on lease Los Angeles 053732.
Decision of October 31, 1956 on offers of appellants.

In reply refer to:

Sacramento 051470
051471
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 20, 1957

DECISION

E. B. Hall & Company : Oil and Gas

Manager's Decision Affirmed

E. B. Hall and Company has appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Sacramento, California, dated December 2, 1955, rejecting its offers (Sacramento 051470 and 051471) for noncompetitive oil and gas leases under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offers were rejected because they did not each comply with the requirements embodied in 43 CFR 192.42(d); that an offer for a noncompetitive oil and gas lease may not include less than 640 acres except where it is shown that the lands are in an approved unit or cooperative plan of operation or in such plan approved as to form by the Director of the Geological Survey or where the land applied for is surrounded by lands not available for leasing under the Mineral Leasing Act. The Manager found that the land adjoining the land applied for was in each case available for leasing and should have been included in one offer.

The appellant's application, Sacramento 051470 embraced an area of 40 acres described as the NW$\frac{1}{4}$SE$\frac{1}{4}$ of sec. 20, T. 27 S., R. 27 E., M. D. M., California; the lease offer 051471, for 80 acres, embraced the S$\frac{1}{2}$SE$\frac{1}{4}$ of sec. 20 of the same township. The lands described in each offer are contiguous to each other and comprise a total area of 120 acres, all of which is available for leasing.

The appellant contends that the two lease offers should not be considered separately, but should be considered as one application.

The appellant filed two separate lease offers and paid two filing fees. Since such applications were each individually defective because they did not comply with the pertinent regulation and do not fall within any of the stated exceptions (43 CFR 192.42(d)), they were properly rejected. Annie Dell Wheatley, The Superior Oil Company, Intervener, 62 I. D. 292.

It is apparent that the appellant seeks to amend its offers by consolidating the two applications into one in order to preserve the priority of filing. In this connection, paragraph 9 of the instructions on the reverse side of the lease offer, provides that "The offer will be rejected and returned to the offeror and will afford the applicant no priority if: * * * (b) The total acreage is * * * less than 640 acres or the equivalent of a section and is not within the exceptions in 43 CFR 192.42(d)." An amended offer, for priority purposes, would be effective only from the date of its filing. The record indicates that there are pending 32 valid oil and gas lease offers which were filed simultaneously for the same lands. Consequently, an amendment of the appellant's offer would serve no useful purpose.

Therefore, for the reasons stated above, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a filing fee of $5 for each separate application, claim, entry, permit, lease, protest or similar filing or interest on which the appellant is seeking favorable action. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950 effective May 1, 1956, as amended by Circular 1962 effective October 4, 1956. See Information Sheet attached.

(sgd.) Edward Woozley

Director

Attachment

DISTRIBUTION:
E. B. Hall & Company (Certified Mail); Gilmore & Gilmore (Regular Mail);
Minerals Staff Officer (5); Geological Survey (6);
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
BF

16399

In Reply Refer To:

Los Angeles 0129078
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 23, 1957

Certified Mail
Return Receipt Requested

DECISION

Frank Frost	:	Oil and Gas

Manager's Decision Affirmed

Mr. Frank Frost has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated September 8, 1955, rejecting his oil and gas lease offer filed pursuant to Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. 1952 ed., Supp. III, sec. 226.

On March 7, 1955, Mr. Frost filed an offer to lease the SW$\frac{1}{4}$SE$\frac{1}{4}$ sec. 3 and the W$\frac{1}{2}$NE$\frac{1}{4}$, SE$\frac{1}{4}$NE$\frac{1}{4}$, SE$\frac{1}{4}$, W$\frac{1}{2}$ of sec. 10, T. 5 N., R. 29 W., S.B.M., California. This offer was rejected on the ground that the lands were then embraced in oil and gas lease Los Angeles 056597. This lease was issued for a period of 5 years from February 1, 1949, and extended for a period of 2 years upon the termination of the unit agreement of which it was a part, on January 1, 1954. It was relinquished shortly thereafter. After Mr. Frost had called the Manager's attention to certain conflicting notations in the tract book and serial register concerning the termination of lease Los Angeles 056597, the Manager, by letter of June 17, 1955, notified Mr. Frost that he would be allowed to refile his offer without loss of his original filing fee, with priority from the filing of the new offer.

Mr. Frost then filed a new offer for the same lands on June 22, 1955, which was rejected, in the decision from which this appeal was taken, in accordance with Departmental Order No. 2714 of January 27, 1953, (18 F.R. 700, February 3, 1953).

The order is in part as follows:

> Section 1. Action on Applications. It is ordered that until further notice, no oil and gas lease under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.) as amended and supplemented, shall be issued for the public lands within the area described in section 2. All pending applications for leases and all applications for such leases hereafter filed, shall be rejected."

Section 2 of the order describes, among other lands, those for which Mr. Frost's offer was filed. Section 3 states that the order was issued on the recommendation of the Department of Agriculture in order to protect the watershed and wild-area values of the land.

It is Mr. Frost's contention that "the land in question was under a valid and acknowledged lease extending beyond the time specified in said Register Order No. 2714 that affiant is entitled therefore to a lease to the land in question." Appellant states that he was informed by the Land Office that the land was open to leasing and was assured that a lease would issue. It is regretted that Mr. Frost was not informed of the provisions of Departmental Order No. 2714 at the time he filed his original lease offer, or in the Manager's decisions. Presumably he would have been saved some inconvenience had he been informed. In any event, the order was published and its terms are explicit in stating that "all pending applications for leases and all applications for such leases hereafter filed shall be rejected." Mr. Frost's lease offer was not pending at the time of the order, but it was "hereafter" filed and its rejection was therefore proper.

As to lease Los Angeles 056597, it was in existence before the order and was unaffected by it since the order did not purport to cancel leases already in existence.

The Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR, Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

(sgd.) Edward Woozley

Edward Woozley

Director

Attachment

DISTRIBUTION:

Mr. Frank Frost (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, F. S., U. S. Dept. of Agriculture (8)
Appeals List No. 1
CCS

appealed to Sec

In reply refer to:

Los Angeles 0121558 etc.
5.04g

Certified Mail
Return Receipt Requested

DECISION

June 5, 1957

Reginald Clark et al : Oil and Gas

Manager's Decision Affirmed

Reginald Clark, John J. Turner and Jonah Jones, Jr. have appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated August 16, 1955, which rejected their offers[1] to lease certain lands on San Miguel Island and ancillary islets for oil and gas purposes.

The records of the Department show that San Miguel Island was transferred to the control and jurisdiction of the Department of the Navy by Executive Order 6896, dated November 7, 1934, and that on April 28, 1955, the Department of the Navy informed the Bureau of Land Management that it wishes no oil and gas leasing of any portion of San Miguel Island. The Manager so informed appellants, in the decision from which their appeals are taken and rejected their applications accordingly.

Offers similar to appellants' have been filed for oil and gas leasing on San Miguel Island in the past and have been rejected for the same reason. Emilio J. Lagomarsino, A-26588 (January 19, 1953), Jack Weldon Wood, A-27240 (December 23, 1955). In the Wood case the Assistant Secretary of the Interior stated:

> "It has long been the policy of the Department to reject oil and gas applications where the lands applied for are being administered by another agency of the Government and that agency objects to the issuance of an oil and gas lease on the grounds that operations under the lease will interfere with the purposes for which the land is being used. John C. de Armas, A-27105 (May 16, 1955). In view of the objection by the Department of the Navy to the leasing of San Miguel Island, the appellant's application must be rejected."

The lease offers in this case must be rejected. The Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a filing fee of $5.00 for each separate application, claim, entry, permit, lease, protest or similar filing or interest on which the appellant is seeking favorable action. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:
Messrs. Reginald Clark, John J. Turner, Jonah Jones, Jr. (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, F. S., U. S. Department of Agriculture (8)
Appeals List No. 1
CCS

13229

LO

1 file
1 John
1 Fred.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 14, 1957

Registered Mail
Return Receipt Requested

DECISION

Ex parte, The California Company : BLM 013997 (Parcels 3 and 5)

DECISION OF JUNE 7, 1956, REVOKED IN PART

The above-captioned lease, BLM 013997 (Parcels 3 and 5), and non-competitive offer, BLM 036377 (Parcel VI), were the subject of the decision of June 7, 1956. Timely response was made to the June 7, 1956, order to show cause why Parcels 3 and 5, lease BLM 013997, should not be held for cancellation because portions of those parcels were thought to belong to parties other than the United States and to show cause why Parcel VI of offer BLM 036377 should not be rejected because portions of that parcel were thought to belong to parties other than the United States also. Upon reconsideration, the decision of June 7, 1956, is modified as follows:

I find that Connally did not, in terms, establish a monument and call it the southernmost corner of section 11 as might be implied from the June 7, 1956 decision; merely, he set a post at the end of his traverse of the perimeter of the west bank of Southwest Pass. Considering the normal practice in surveying public lands, it would be difficult now to say that there is a surveyed section 11. But the official plat of the township may be presumed to show one and it is held that the survey approved created such a section.

What was section 11? Even to give to section 11 all that surveying practice would allow in the matter of projection consistent with the practice of that day as evidenced generally in the survey of river lots that section can only be construed to cover the area back of the line surveyed along the bank of the Pass. Normally such sections stopped at the edge of the marsh which usually began a few chains back (northwest as to the right bank) of the high water mark along Southwest Pass. No case has been found where a survey was projected from a single corner as would have been necessary to include the "marsh" (Connally's term for it) lying to the south and west of the terminal point of Connally's survey along the right bank of the Pass.

As to the withdrawal of January 30, 1841, to provide a reservation for lighthouse purposes, the Company apparently assumes that it was the intent to withdraw all of the land to "lands end" so as to prevent obstructions being built by possible entrymen which would obscure the lighthouse from view from that direction. I see no basis for this argument. The area was returned as "marsh" with the connotation that it was unsurveyable. The history of the river, even as known at that time, must have indicated that this marsh was unstable, and too low and wet to be usable. Aside from this the actual designation of the withdrawn area must govern over any fancied intent. If we indulge in conjecture as to what was intended we can find from the writing below the actual order of withdrawal that the primary concern was to make sure that Wagner's and Fitzgerald's (or lighthouse) Islands were withdrawn and that the order effected by specifically naming them. Section 11 on the right bank, as shown by the Company's exhibit, including Fitzgerald's Island, was apparently of interest only as affording a site for a dwelling to be used in connection with the reservation. For this purpose, of course, the marsh was not suited and if there was any conjecture as to what area of the mainland would be included in section 11, the prevailing surveying practice of deputy surveyors of the times to extend such (river) sections or lots back only to the marsh would inevitably have led to the conclusion that it would embrace only the high land which in that general area was a narrow strip along the Pass. In any event, the "intent" was not so strong but that the designation of section 11 was left wholly to the discretion of the Surveyor General.

However, since the determination of what remains of the original "marsh" and what land accreted to it could only be made, if it is possible at all, upon the submission of competent evidence, the decision of June 7, 1956, insofar as it relates to BLM 013997 and Parcel VI of BLM 036377 is revoked. This decision, of course, does not finally and conclusively settle the question of title or prevent the State of Louisiana from raising the question of title to any of the area involved either under the approved grant of May 6, 1952, of all swamp and overflowed land west of the surveyed lands or as it may be entitled under the Swamp Land Acts should it see fit to do so.

Earl J Thomas

Acting Director

copy to: Henry S. Morgan, 801 Shoreham Building, Wash. 5, D. C.
Marvin J. Sonosky, Atty. for California Co., 1028 Conn. Ave. N. W.
Eastern States Office
Minerals Staff Officer
Director's Reading File
Attorney's Reading File
Div. of Public Lands Reading Files - Room 7357
Each case file
State Land Commissioner, Louisiana
Appeals List No. 1

r9 In reply refer to:

Washington 02151
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1957

DECISION

Standard Oil Company of California	:	Oil and Gas (Acquired Lands)

Appeal Dismissed
Case Remanded for Further Processing of Lease Offer

Standard Oil Company of California appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Spokane, Washington, dated March 13, 1957, as amended March 15, 1957, rejecting in part its noncompetitive oil and gas lease offer for acquired lands, filed under the Act of August 7, 1947 (30 U.S.C., 1952 ed., secs. 351-359). The lease offer was in part rejected, as to certain lands therein described, for the reason that such lands were not subject to leasing under the Mineral Leasing Act for Acquired Lands.

In a letter dated May 28, 1957, addressed to the Director, the appellant withdrew its appeal. Consequently the appeal is dismissed. Alvin James, A-27401 (November 13, 1956).

The case file is remanded to the Manager, through the Bureau's State Supervisor at Spokane, Washington, for further processing of the appellant's offer with respect to the lands available for oil and gas leasing.

For the Director:

DISTRIBUTION:
SS(Washington) with case record
Washington 02151
Standard Oil Co. of California (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

13229

affirmed A27547 - 9/19/58

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 28, 1957

DECISION

Floyd A. Wallis, Protestant : BLM-A 039136

Rejection of Protest Made Final

As of May 1, 1955, the Supervisor, Eastern States Land Office, issued "permit to drill 'slant wells'" BLM-A 039136 to the California Company authorizing that company, subject to the conditions stated in the permit, to drill wells from locations on certain unsurveyed lands of the United States not then under oil and gas lease into adjoining lands for the sole and exclusive purpose of searching for and producing oil and gas from such adjoining lands. The permit was issued pursuant to the authority contained in section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. sec. 181, et seq.). On August 9, 1955, a protest was filed by Floyd A. Wallis, an applicant for acquired lands oil and gas leases for the same land, asking that the permit be rescinded.

This office by decision of June 7, 1956, rejected the protest. That decision also considered the Wallis acquired land oil and gas lease applications and his public land lease application as well as other, conflicting lease applications and offers. As to the various lease applications and offers the decision allowed the parties to show cause why Wallis' public land oil and gas lease offer should not be allowed and why all of the other lease applications and offers should not be rejected. No appeal has been filed from the decision rejecting the protest. On the contrary, Wallis in response to the cause duly shown by the party whose applications and offers conflicted with his (Wallis') lease offer although recognizing that the protest had been denied reiterates his objections.

The reason for allowing the parties to show cause is clearly set forth in the June 7, 1956, decision was the fact that, with respect to the lease applications and offers (and one oil and gas lease) certain questions, new to the controversy had been raised and decided as to which neither applicant (offeror) had been given an opportunity to be heard. That reason did not relate to the permit in any way and it is quite clear that the right to show cause was not extended to the protestant, although it was extended to him as lease applicant and offeror.

For the reasons stated the rejection of the protest has become final.

Acting Director

copy to: Henry S. Morgan
Marvin J. Sonosky, Atty. for California Company
Harry M. Edelstein
Eastern States Office
Minerals Staff Officer
Director's Reading File
Attorney's Reading File
Div. of Public Lands Reading Files - Room 7357
Appeals List No. 1

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JUL 15 10 09 AM 1957
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

re

In reply refer to:

Los Angeles 082490
082491
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 28, 1957

DECISION

Jack W. Wood : Oil and Gas

Manager's Decision Reversed

Jack W. Wood has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated August 3, 1955, rejecting Mr. Wood's applications for 5-year extensions of his non-competitive oil and gas leases Los Angeles 082490 and 082491.

The leases were issued to Mr. Wood effective August 1, 1950. The termination date of the leases was July 31, 1955, which fell on a Sunday. The following day, Monday, August 1, 1955, Mr. Wood's applications for extension were filed. The Manager rejected the applications for the reason that the statute, 30 U.S.C. 1952 ed. Supp. IV sec. 226c, and the regulations, 43 CFR 192.120(b), require that an application for extension be filed prior to the expiration date of the lease. The Manager held that an application for extension could not be filed after that date.

It has been decided, however, that an application for extension of a non-competitive oil and gas lease "may be timely filed on the first business day following a Sunday or legal holiday on which the primary term of the lease expires." John J. Farrelly and The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55, D.D.C. (October 11, 1955). That holding is decisive of this appeal. The decision appealed from is reversed, and the case remanded for appropriate action on Mr. Wood's applications for extension of his leases.

Signed/Earl J. Thomas
Earl J. Thomas
Acting Director

DISTRIBUTION:

Mr. Jack W. Wood (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Mr. John Sieker, Forest Service, U. S. Department of Agriculture (8)
Appeals List No. 1
Asst. to SS, w/Case records Los Angeles 082490 and 082491
CCS

Affirmed A 27536 - 1/23/58

In reply refer to
Los Angeles 0135753
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

June 28, 1957

Certified Mail
Return Receipt Requested

DECISION

Donald C. Ingersoll	:	Oil and Gas

Manager's Decision Affirmed

Donald C. Ingersoll has appealed to this office from the decision of the Manager, Land Office, Los Angeles, California, dated September 16, 1955, which rejected his offer to lease Los Angeles 0135753 for oil and gas purposes under the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., Sec. 351-359).

The lands in the offer were described by metes and bounds and comprise a portion of the United States Naval Ammunition and Net Depot, Seal Beach, California, title to which has been acquired by the United States.

The lands involved are not subject to lease under the Mineral Leasing Act for Acquired Lands, supra, since Section 3 of that act provides in pertinent part as follows:

> " *** All deposits of *** oil, oil shale, gas, *** which are owned or may hereafter be acquired by the United States (exclusive of such deposits in such acquired lands as are *** (b) set apart for military purposes ***) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. *** "

The lands applied for by the applicant were acquired for use of the United States Navy.

In the case of the Ohio OilCompany, A-26292 (September 18, 1951), it was held that the phrase "set apart for military purposes" seems plainly to include any land which has been acquired by, and is being held under the jurisdiction of, the Department of the Navy, in contemplation of its use in connection with the performance of military as distinguished from civil functions.

Since the lands in question are set apart for military purposes, it is clear that they do not come within the terms of the Mineral Leasing Act for Acquired Lands. (See also decision dated May 4, 1956, in BLM-A 023014 (Miss.), approved by the Assistant Secretary of the Interior).

Accordingly, the decision of the Manager dated September 16, 1955 is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35 inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Acting Director

Attachment

Distribution:

Mr. Donald C. Ingersoll (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, U. S. Forest Service, Dept. of Agriculture (7)
Appeals List No. 1.

In rep[illegible] refer to:

Sacramento 051147
5.04g

7-26-57

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

	:	
Joseph C. Kimble	:	Oil and Gas
	:	

Manager's Decision Affirmed

Joseph C. Kimble has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated September 14, 1955 which rejected, in its entirety, his noncompetitive oil and gas lease offer under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected because the records fail to disclose lands such as described in the offer.

The appellant, in his lease offer, attempted to describe approximately 1500 acres of land by metes and bounds on the assumption that such lands were omitted from the official surveys of the area, and that an hiatus occurs between T. 16 S., Rs. 8 and 9 E., M.D.M., California. The Manager, in effect, found that no hiatus exists, that there are no omitted lands, and that according to the official plats of survey no such lands exist.

The appellant has submitted photostats of the official plats of survey of T. 16 S., Rs. 8 and 9 E. The reproductions were projected not as individual plats but on one sheet and placed side by side. A visual examination of his exhibit would appear to sustain the allegation that lands were omitted from survey. The appellant bases his appeal on the argument that the official plats of survey, presented as above, disclose an hiatus wherein are located the lands applied for.

T. 16 S., R. 8 E. was surveyed and the plat approved in 1873. G. W. Baker's survey of T. 16 S., R. 9 E. was approved in 1880. Baker's field notes show the boundaries of that township and a retracing of certain boundaries of T. 16 S., R. 8 E. His field notes in referring to the south corner state in part "The corner to Township 16 South, Ranges 8 and 9 East is rotten and laying on the ground, I reset it ***". Later he remarked in referring to the corner "to Townships 15 and 16 South, Ranges 8 and 9 East, which I find standing and agreeing with Field Notes. From this Township corner I run along a true line on South boundary of Section 31, Township 15 South Range 9 East". From his Notes it is established that he found, re-marked and authenticated the corner of sections 12 and 13 on the east boundary of T. 16 S., R. 8 E., and that the corner of sections 7 and 18 on the west boundary of T. 16 S., R. 9 E., was made identical therewith. He also found and re-marked the true corner of sections 24 and 25 on the east boundary of T. 16 S., R. 8 E. to which he made to coincide the west boundary and corners of sections 19 and 30, T. 16 S., R. 9 E. Baker's notes further show that the north corners of T. 16 S., Rs. 8 and 9 E. are identical, and coincide with the south corners of T. 15 S., Rs. 8 and 9 E. Approval of Baker's survey accepted, as monumented, the corners set by the previous survey. Accordingly secs. 6, 7, 18 and 19 were surveyed as partial sections hereby compensating for the overly large sections created by the 1873 survey.

The corner monuments set by survey are controlling concerning the area of surveyed land for "The general rule is that monuments natural, or artificial, prevail over calls for course, distance, or quantity*** Distance and quantity are least important and the last guides to be resorted to in the location of a survey. ***the courts *** have not allowed invasion of an area embraced by the former survey under which the land was disposed of regardless of demonstrated error in the former survey ***" Marco Island, 51 L. D. 322, 325. In the case of J. M. Beard, 52 L. D. 451, 462, the Department held that "Public lands described by the rectangular surveying system are defined by the lines and corners of such survey; not by their erroneously indicated positions***". Thus it is conclusively shown that the two townships have each a common boundary and that no lands lie between their boundaries which have not been included in official surveys.

Inasmuch as the lands sought are not within an hiatus, have not been omitted from previous surveys and are in fact surveyed land, the offer was properly rejected because "***Each offer must describe the lands by legal subdivision, section, township and range, if the lands are surveyed***". 43 CFR 192.42(d). An offer that describes surveyed land in terms of a metes and bounds description is properly rejected.

Accordingly, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00

filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

(sgd.) Edward Woozley

Director

Attachment

DISTRIBUTION:

Joseph C. Kimble (Certified Mail)
Geological Survey (6)
Mineral Staff Officer (5)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals list No. 1
BF

In reply refer to:

Sacramento 052997
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 2, 1957

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas
:
Appeal Dismissed

Duncan Miller has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Sacramento, California, dated November 26, 1956, which rejected in its entirety his oil and gas lease offer for the reason that part of the lands applied for by Mr. Miller were included within a prior oil and gas lease offer for which a lease had issued, and the remainder were within the known geologic structure of the Mt. Poso field.

The Manager allowed Mr. Miller a right of appeal to the Director of the Bureau of Land Management, stating that compliance was required with sections 221.1 to 221.5 inclusive and to other pertinent sections of the Department's rules of practice. 43 CFR, 1956 Supp., Part 221.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> ". . . The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 . . . ."

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director . . . will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is included in the notice of appeal and is not filed within the time required; . . . "

Appellant filed his notice of appeal on December 21, 1956. A statement of reasons should have been filed not later than January 21, 1957. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the rules of practice. The appeal is therefore dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of an appeal the adverse party to be served with notice thereof is Mr. Thomas Connell, lessee of lease Sacramento 052670, whose address is 453 So. Spring Street, Los Angeles 13, California.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
CCS

21592

In reply refer to:

Sacramento 043579
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 7, 1957

Certified Mail
Return Receipt Requested

DECISION

George L. Bradford : Oil and Gas

Manager's Decision Affirmed

George L. Bradford has appealed to the Director of the Bureau of Land Management from a decision by the Manager of the Land Office, Sacramento, California dated July 12, 1956, which held that Mr. Bradford's competitive oil and gas lease Sacramento 043579 terminated by operation of law on June 30, 1956, and which rejected his application for a 5-year extension of the lease under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The lease, covering 160 acres of land in the Semitropic field, Kern County, California, was issued as of July 1, 1951, to Harry S. Tansey, and was assigned to the appellant, the assignment being approved on September 1, 1954.

Section 1 of the appellant's lease provided that the term of the lease was "for a period of 5-years, and so long thereafter as oil or gas is produced in paying quantities * * *." The record fails to disclose that any drilling was ever undertaken on the leasehold. It is clear, therefore, that the appellant's lease was not extended by virtue of any production at the end of the primary term of the lease.

On June 28, 1956, before the expiration of the primary term of his lease, the appellant filed an application for a 5-year extension of the lease, and paid the sixth year's rental. The application form which he used was the form for a single extension of a noncompetitive lease, as provided for by section 17 of the Mineral Leasing Act. There is no comparable statutory provision which is applicable to competitive leases nor were there any other extension provisions of section 17 in effect at the end of the 5-year term for which this lease was issued which were applicable to this lease. Thus, the application for 5-year extension was properly rejected. *Ben F. Swisher*, A-27201 (November 21, 1955).

The appellant contends in his appeal that the lands covered by his lease are not within the known geological structure, and that they are subject to leasing on a noncompetitive basis. He asserts, in effect, that his application for renewal is a proper noncompetitive lease offer for the lands, and that he, being the first qualified applicant, is entitled to a 5-year noncompetitive lease.

The contentions of the appellant are without persuasion. The Director of the Geological Survey determines the boundaries of the known geologic structures of producing oil or gas fields (43 CFR 192.6). The Bureau of Land Management as well as oil and gas lease offerors are bound by such determination in the absence of proof to the contrary. *Lillie Mae Yates*, A-26271 (February 8, 1952); *Stanolind Oil and Gas Company*, A-27325 (July 12, 1956). Therefore, until the Director of the Geological Survey informs the Bureau of Land Management that the lands involved in lease Sacramento 043579 are not within a known geologic structure, such lands may be leased only on a competitive basis. *Max Barash, The Texas Company*, 63 I. D. 51.

Even if it were determined that the lands involved were subject to noncompetitive leasing, the appellant's application for renewal could not be considered as an offer to lease. The pertinent regulations in effect governing the filing of noncompetitive lease offers require that such an offer be made on a prescribed form (Form 4-1158), or an exact reproduction thereof. 43 CFR 192.42. It follows, therefore, that appellant's application for renewal could not be accepted as an offer to lease if the lands were available for noncompetitive leasing.

Accordingly, the decision of the Manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Signed/ Edward Woozley

Director

Attachment

DISTRIBUTION:

George L. Bradford (certified mail)
Gilmore and Gilmore (regular mail)
Harry S. Tansey (regular mail)
Minerals Staff Officer (3)
Geological Survey (5)
Appeals List No. 1
BF

appealed to Sec
affirmed A27547 - 9-19-58

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 8, 1957

Registered Mail
Return Receipt Requested

DECISION

Floyd A. Wallis, Protestant : BLM-A 039136

DECISION MODIFIED

On June 28, 1957, I finally rejected the protest of Floyd A. Wallis filed August 9, 1955, against a "permit to drill 'slant wells' ", BLM-A 039136 of the California Company. By decision of June 7, 1956, the protest had been rejected. The same decision considered other matters with respect to which new questions were raised initially by this office which had not been raised or considered by the parties.

It was intended by that decision to give the parties an opportunity to show cause with respect only to the new questions. Thus, in summarizing the holdings in the decision several applications and leases were stated to be "subject to rejection" or "held for rejection /or/ cancellation" in whole or in part but as to the petition here considered it was stated "(8) the petition for recision of Slant Drill Permit BLM 039139 is rejected." However, the preceding paragraph giving "all parties * * * 30 days in which to show cause, * * *" does not distinguish the protest and although the basis for the show cause order clearly does not exist with respect to it, the protestant has a technical point in his favor as argued in his request that the decision of June 28, 1957, be rescinded. Another point made in the request is that in an extension of time decision dated July 13, 1956, the permit serial number was listed with the other cases. The protestant did file a paper purporting to show cause why the protest should not be rejected.

Since the view taken by protestant is a possible one, the decision of June 28, 1957, is modified to allow protestant the right of appeal, if appeal is filed within 30 days from receipt of notice of this decision. See Dawkins v. Hedin, 44 L. D. 371.

Edward Woozley
Director

Distribution:
Appeals List No. 1
Mr. Harry N. Edelstein, Attorney at Law
Mr. Marvin J. Sonosky, Attorney at Law
Eastern States Office
Minerals Staff Officer
Director's Reading File
State Land Commissioner, Louisiana
Henry S. Morgan
Floyd A. Wallis

Attachment: See Information Sheet for filing an appeal to the Secretary.

In reply refer to:

Los Angeles 0113825
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 9, 1957

DECISION

Raymond Chorney : Oil and Gas

Case Remanded

Raymond Chorney has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated November 29, 1955, suspending his oil and gas offer, Los Angeles 0113825 in part, because of a proposed withdrawal for the United States Water Conservation District.

Subsequent to the filing of the appeal, the District advised that it had withdrawn its proposed withdrawal application.

Accordingly, the case is remanded to the Manager of the Land Office at Los Angeles, through the Assistant to the State Supervisor, for appropriate consideration of the lands remaining in the offer.

For the Director:

a.H.

DISTRIBUTION:

Mr. Raymond Chorney (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Ass't. to SS (Los Angeles)--with Case Record
Appeals List No. 1
FF

21592

In reply refer to:

Los Angeles 056682
076663
0129445

5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 21, 1957

Certified Mail
Return Receipt Requested

DECISION

George R. Wickham : Oil and Gas

Manager's Decision Affirmed

George R. Wickham has appealed to the Director, Bureau of Land Management, from the decision of the Manager, Land Office, Los Angeles, California, dated March 15, 1955. That decision, in effect, declared that oil and gas leases, Los Angeles 056682 and 076663 terminated by operation of law at the expiration of their extended terms and that lease offer, Los Angeles 0129445, filed March 8, 1955, was not the first application filed for the lands described therein.

Oil and gas lease 056682 was issued, effective January 1, 1945, for a period of five years, under the provisions of Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226). The lease was "extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities". Oil and gas lease 076663 was created by assignment of a portion of lease 056682 and was also extended for five years. A well was drilled on leasehold 076663. The continuation of lease 076663 beyond December 31, 1954 was contingent upon whether there was a well thereon capable of producing oil or gas in paying quantities. Whether lease 056682 continued beyond that date was contingent upon a discovery of oil or gas in paying quantities on lease 076663., 30 U.S.C., 1952 ed., Supp II., sec. 187a.

No drilling operations were undertaken on the lands included in either of the above leases until the last month of the extended terms thereof, i.e., December 1954. At that time a well was drilled on leasehold 076663. By letter of January 1, 1955, the appellant (and the operator) informed the Manager "that a discovery of valuable oil and gas has been made upon lease 076663 and that by reason thereof, lease 056682 is extended pursuant to the Act of August 8, 1946".

By registered letter of January 4, 1955, the Oil and Gas Supervisor, Geological Survey, notified the lessees and operators that production tests conducted through December 31, 1954 were not sufficiently conclusive to demonstrate that the well was capable of producing oil and gas in paying quantities. Pursuant to statute and regulation (30 U.S.C. sec. 226, supra: 43 CFR 192.121) the lessees and operators were allowed 60 days in which to demonstrate that the well was capable of producing oil or gas in paying quantities.

On March 7, 1955, the Oil and Gas Supervisor reported that the lessee had not demonstrated that lease 076663 was capable of producing oil or gas in paying quantities prior to the expiration date of the lease, December 31, 1954, or within the subsequent 60-day period. The appellant does not contest the finding of the Oil and Gas Supervisor.

On March 8, 1955, the appellant filed a new offer to lease, Los Angeles 0129445, including the same lands previously embraced in leases 056682 and 076663. Other lease offers were filed for these same lands between January 3, 1955 (the first business day after December 31, 1954) and March 7. 1955 (the last day of the 60-day period). The appellant contends that the 60-day period afforded him by the letter of January 4, 1955, was a 60-day extension of oil and gas leases 056682 and 076663, that his new offer of March 8, 1955 is the first one filed after the expiration of the 60-day period, and therefore he has a statutory preference right to the issuance of a new lease.

Section 17 of the Mineral Leasing Act, supra, as amended by the Act of July 29, 1954 provides, in pertinent part:

> "No lease issued under the provisions of said sections covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee is allowed a reasonable time, but not less than sixty days after notice by registered mail, within which to place such well on a producing status:***". 1/

1/ Note that 43 CFR 192.121(a) and (b) is consonant with the statute, and presupposes a well capable of producing, in paying quantities, on its expiration date. The regulation is here quoted:

> "Continuation of lease on termination of production. (a) A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.
>
> (b) No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so:***"

The law is not authority for granting an extension. It has the effect itself of extending a lease. The extension, however, does not attach unless the condition calling it into being exists. If the condition exists "a well capable of producing oil or gas in paying quantities" the lease is automatically extended for at least 60 days by virtue of the law. If there is no well capable of producing oil or gas in paying quantities, and there was none on leases 056682 and 076663, then the law does not operate, there is no extension, and the leases terminate, by expiration, on the last day of their term. In the instant case, the leases terminated on December 31, 1954. Nor is there any statute or regulation authorizing the Oil and Gas Supervisor to "extend" a lease to show there is a well capable of producing.

Since it is shown that leases 056682 and 076663 expired on December 31, 1954, by operation of law, and no further act of the Bureau was necessary to terminate them, the lands therein became available for further leasing on the first business day thereafter. If a lease for the lands is to be issued it must be issued to the qualified person who first submits a proper application for it. C. T. Hegwer, et al., 62 I.D. 77.

No error is found in the Manager's decision that the leases herein involved terminated by operation of law on December 31, 1954 and that the lands became available for further leasing on the first business day following their termination. Accordingly, his decision is affirmed.

When this decision becomes final, the case records will be remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, California for further processing, of oil and gas lease offer Los Angeles 0129445, in accordance with this decision.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

(sgd.) Earl J. Thomas

Earl J. Thomas

Acting Director

Attachment

DISTRIBUTION:

George R. Wickham (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (9)
Appeals List No. 1
BF

appeal to Sec
affirmed 9-29-58 A-27566

In reply refer to:

Los Angeles 0137915
0138363
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 21, 195

Certified Mail
Return Receipt Requested

DECISION

	:	
	:	Acquired Lands
Duncan Miller	:	Oil and Gas
	:	

Manager's Decisions Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from two decisions of the Manager, Land Office, Los Angeles, California, both dated February 14, 1956, rejecting his noncompetitive oil and gas lease offers filed under the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C., 1952 ed., secs. 351-359). Lease offer Los Angeles 0137915 was rejected for the reasons that the lands sought are set aside for military or naval purposes under the administrative control of the Navy Department and also partly within the City of Los Angeles, and not subject to leasing under the Acquired Lands Leasing Act. Lease offer Los Angeles 0138363 was rejected for the reason that the description of the lands sought was insufficient to identify the land.

The record discloses that all the lands described in lease offer 0137915 were acquired by the United States through condemnation suit No. 2267-B, in the United States District Court, Southern District of California, and are under Navy control within the Naval Supply Depot at San Pedro; part of the lands is within the corporate limits of the City of Los Angeles.

The Acquired Lands Leasing Act, supra, (30 U.S.C. sec. 352) clearly excludes from leasing such lands as are "(a) situated within incorporated cities, towns and villages, national parks and monuments, (b) set apart for military or naval purposes".

The Department of the Navy has advised the Bureau of Land Management that "it has been determined that development of the oil and gas deposits within the lands comprising the fuel storage area of the Naval Supply Depot, would interfere with the primary purposes for which the property is used". Since the lands applied for are set apart for Naval purposes and are used for such purposes, and part of the lands are also within an incorporated city, they are not subject to leasing under the Acquired Lands Leasing Act. Cf. The Ohio Oil Company, A-26292 (September 18, 1951; Director's decision, approved by the Assistant Secretary of the Interior, R. Brent Forman, BLM-A 023014 (Miss) (May 4, 1956): 43 CFR 200.2.

Therefore, the Manager's decision rejecting oil and gas lease offer, Los Angeles 0137915 is affirmed.

The appellant contends that oil and gas lease offer 0138363 properly described the lands sought, approximately 30 acres, by legal description as reflected by the official records.

A review of the description in this lease offer fails to show that the appellant made any attempt to comply with the pertinent regulations in describing the land sought. The pertinent regulation, 43 CFR 200.5, provides in material part as follows:

> "(a) Each offer or application for a lease or permit must contain
>
> *
>
> (2) a complete and accurate description of the lands for which a lease or permit is desired. If surveyed according to the governmental "rectangular system" they should be described by legal subdivision, section, township and range, *** The description should, if practicable, refer to (i) the administrative unit or project of which the land is a part, the purpose for which the land was acquired by the United States, and the name of the governmental body having jurisdiction over the land, (ii) the names of the persons who conveyed the lands to the United States, (iii) the date of such conveyance, and the place, liber and page number of its official recordation".

The lands embraced in offer 0138363 were not described according to the "rectangular system" and the offer gave no other indication of the location of the lands whereby they might be identified in the records of the Land Office. The only apparent compliance with the cited regulation is the statement in the offer that the land sought was a "Naval Flight Strip, Naval Department". Aside from the defective description, the offer was subject to rejection for the further reason that the land sought is not subject to leasing under the Acquired Lands Leasing Act. Clearly, as shown above, lands set aside for naval purposes and used as a Naval Flight strip in the control of the Department of the Navy are excluded from the leasing under the Act.

Accordingly, the Manager's decision rejecting oil and gas lease offer Los Angeles 0138363, is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee in each case. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

(Sgd) Earl J. Thomas

Earl J. Thomas

Acting Director

Attachment

DISTRIBUTION:

Duncan Miller (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

appealed to Sec
affirmed 4-29-58
A-27567

In reply refer to:

Sacramento 048013
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 21, 1957

Certified Mail
Return Receipt Requested

DECISION

D. Miller : Oil and Gas

Manager's Decision Vacated
Bond Required

D. Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated July 9, 1956, which held for cancellation his noncompetitive oil and gas lease, Sacramento 048013, issued effective April 1, 1954, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The lease was canceled because of failure of the lessee to comply with the terms of the Manager's decision of May 29, 1956, requiring him to furnish a $1,000 bond for the protection of the surface owner or to appeal within 30 days from receipt of notice of that decision.

Lease 048013 for 120 acres embraced lands patented under the Act of July 17, 1914 (30 U.S.C. secs. 121-122), Patent No. 1125342, issued April 12, 1949. Said act provides in pertinent part:

> " *** Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting,*** ".

The appellant's lease was inadvertently issued without the filing of a $1,000 bond required by regulation, 43 CFR 192.100(b). By decision of May 29, 1956, the Manager required the lessee (appellant) to furnish, within 30 days from receipt of the decision, a $1,000 corporate surety bond or file an appeal from the decision. The appellant received a notice of that decision on June 1, 1956. He filed an appeal on July 2, 1956. By decision of July 9, 1956, the Manager held that the appeal was not timely filed under the rules of practice, 43 CFR Part 221, and held the appellant's lease for cancellation. The appellant has appealed from the latter decision.

Departmental regulation 43 CFR 221.96 relates to computation of time for filing and service. It provides in pertinent part:

> " *** The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday or other non-business day. *** ".

The appellant had 30 days from June 1, 1956 within which to file an appeal from the decision of May 29, 1956. Inasmuch as the last day, July 1, 1956, fell on a Sunday, he had until the close of the next business day in which to file an appeal. As a consequence, his appeal filed on July 2 was timely filed and the Manager's decision of July 9, 1956, canceling lease 048013 was erroneous and is hereby vacated.

The statute and regulation hereinbefore cited provide that prior to the issuance of an oil and gas lease, a bond is required for the protection of the owners of the surface rights. By section 2(a) of his lease, the appellant agreed:

> "(1) To file any bond required by this lease and the current regulations***.
> (2) To maintain any bond furnished by the lessee as a condition for the issuance of this lease.
>
> * * * * * * * * * *
>
> (5) Until a general lease bond is filed to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of the surface rights *** ".

Thus, it is clear that the filing and maintaining of any bond required was a condition for the continuation of the oil and gas lease involved in the lessee's appeal. Departmental regulation 43 CFR 192.161(b) provides in part that:

> "Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled

> by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to the lessee in accordance with section 31 of the act, if default continued for the period prescribed in that section after service of notice thereof *** ".

Therefore, upon discovery that the lease inadvertently had been issued without filing of the required bond, the lessee was properly required by the May 29 decision to file the bond or appeal within 30 days of notice thereof.

The lease, since the date of its issuance, has been a valid and subsisting contract between the lessee and the United States Government. However, as shown above, the filing of a $1,000 corporate surety bond for the protection of the surface owner is mandatory. The appellant is allowed 30 days from receipt of notice of this decision within which to file a bond. The bond must be filed with the Manager, Land Office, Sacramento, California.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

(Sgd) Earl J. Thomas

Acting Director

Attachment

DISTRIBUTION:

D. Miller (certified mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service, U.S. Dept. of Agriculture (8)
Appeals List No. 1
BF

21592

In reply refer to:
Los Angeles 0139242
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 23 , 1957

Certified Mail
Return Receipt Requested

DECISION

Richard R. Clements : Oil and Gas

Manager's Decision Affirmed

Richard R. Clements has appealed from a decision dated March 13, 1956, by the Manager, Land Office, Los Angeles, California, rejecting his acquired lands oil and gas lease offer filed under the Act of August 7, 1947 (30 U.S.C., 1952 ed., secs. 351-359). The lease offer was rejected on the grounds that all of the lands sought come within one or more of the excepted categories of lands not subject to lease under the 1947 act, supra, i. e. (a) situated within incorporated cities, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands.

Mr. Clements, in his appeal, does not attempt to refute the reasons advanced by the Manager for rejecting the lease offer. Rather, he submits a series of operating stipulations and suggests that inclusion of these stipulations in his lease offer, should act to merit reconsideration of his offer.

The lands in this application lie in and along Los Angeles Harbor. Part of the lands are submerged and/or tidelands. Part of those above the high water mark lie within Fort McArthur, a military reservation. The remainder lie within city limits of Los Angeles.

The lands within Fort McArthur were ceded to the United States by Mexico under the Treaty of Guadalupe Hildago concluded February 2, 1848. By presidential order of September 14, 1888, the land was declared and set apart as a military reservation. Since these lands are not acquired lands under the terms of the Act of 1947, supra, they are not subject to leasing under that act.

The other lands - tidelands, submerged lands, and land within the city of Los Angeles - cannot be leased because lands in these categories are specifically excluded from leasing by the Act of 1947, supra. The obligation of the Secretary of the Interior in this case is clearly established by law, and he is required by its provisions to reject applications for leases on lands within incorporated cities, tidelands, and submerged lands.

Since some of the lands in this lease offer are not acquired lands, and the remainder are specifically excluded from leasing under the Act of 1947, supra, under which the lease offer was filed, the Manager was correct in rejecting this application and his decision is hereby affirmed.

Richard R. Clements is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received here within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Acting Director

Attachment

DISTRIBUTION:

Richard R. Clements (Certified Mail)
Mineral Staff Officer (5)
Geological Survey (2)
Appeals List No. 1
VJR

In reply refer to:

Los Angeles 0134999
0135109
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 9, 1957

DECISION

Glenn J. Homan :
Edith Metz Homan : Oil and Gas

Cases Remanded

Glenn J. Homan and Edith Metz Homan have filed joint appeals to the Director, Bureau of Land Management, from decisions dated December 13, 1955 and December 21, 1955 by the Acting Manager of the Los Angeles Land Office in two oil and gas lease applications, which they filed jointly under the act of February 25, 1920 (41 Stat. 437, 30 U.S.C. sec. 181 et seq.), and which are identified as Los Angeles 0134999 and 0135109. The Manager in his decision allowed lease to issue on part of the lands in each application and suspended each application in part, on the grounds that the suspended lands were in a proposed United Water Conservation District Withdrawal.

The Regional Administrator by memorandum dated September 30, 1952 had requested the Manager to suspend all oil and gas lease applications for lands included within a proposed withdrawal being negotiated by the United Water Conservation District. The memorandum included the statement that the District had furnished him with a map indicating the lands which would be included in the withdrawal.

By letter dated January 10, 1956, the United Water Conservation District advised that it no longer was interested in the withdrawal of the lands. Accordingly, the cases are remanded for appropriate processing of the lease offers.

Earl J. Thomas
Acting Director

Attachment

DISTRIBUTION:

Glenn J. Homan and Edith Metz Homan
Minerals Staff Officer (5)
Geological Survey (6)
Forest Supervisor, 1443 Federal Building, Los Angeles
Mr. Sieker, U. S. Forest Service (8)
Appeals List No. 1
VJR

In reply refer to:
BLM 039729 (La.)
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 11, 1957

Certified Mail
Return Receipt Requested

DECISION

The California Company	:	Oil and Gas

Appeal Dismissed

The California Company has appealed to the Director, Bureau of Land Management from the decision of the Manager, Eastern States Land Office, Washington, D. C., dated May 29, 1956, which rejected the company's oil and gas lease offer because all of the land applied for was selected as swamp under the Act of March 2, 1849 and approved June 26, 1876 under List 22.

The pertinent part of the Manager's decision is as follows:

> "In view thereof, the lease offer BLM 039729 is rejected, subject to the right of appeal within 30 days from receipt hereof. In the absence of an appeal within the time allowed, this rejection becomes final and steps will be taken to refund $601. rental. See attached information sheet."

The information sheet embodied the procedural requirements for an appeal. Section 221.1 of 43 CFR provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 of 43 CFR provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 of 43 CFR concludes as follows:

> "...The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office

> of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 ...."

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director...will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; ..."

The appellant filed notice of appeal on June 28, 1956. A statement of reasons should have been filed not later than July 30, 1956 since the thirtieth day after the notice of appeal was filed fell on July 28, a Saturday, and July 30 was the first business day thereafter. See 43 CFR, 1956, Supp., 221.96. No such statement has been received, and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the rules of practice. The appeal is therefore dismissed.

The California Company is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by the California Company, then it must serve a copy of all documents on the adverse party, the Attorney General, State of Louisiana, Baton Rouge, Louisiana, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

Attachment

DISTRIBUTION:
Samuel W. McIntosh (Certified Mail)
The California Company (Regular Mail)
Attorney General, State of Louisiana
Minerals Staff Officer (5)
Geological Survey (30
Appeals List No. 1
EG

appealed to Sec.
In reply refer to:
affirmed A 27598 - 1-23-58
Sacramento 051963
052078
052317
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 7, 1957

Certified Mail
Return Receipt Requested

DECISION

Lester C. Hotchkiss and)
Alpha L. Hotchkiss :
A. E. Wright) Oil and Gas
Duncan Miller :
)

Manager's Decisions Affirmed

The above-captioned appellants have each separately appealed to the Director, Bureau of Land Management, from decisions of the Manager Land Office, Sacramento, California, rejecting their noncompetitive oil and gas lease offers 1/ under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Each of the three offers was rejected because it embraced less than 640 acres and the lands applied for were not surrounded by land unavailable for leasing.

The appellants, Hotchkiss, contend that their application was correct and proper and that the lands applied for, aggregating under 640 acres, were surrounded by lands which were not available for leasing at time of filing their lease offer. They contend that inasmuch as the surrounding lands were covered by valid and proper lease offers, they are not required to describe such surrounding lands in their offer. They point out that if they did describe such lands, their offer would have to be rejected because of conflict with the earlier filed applications. It is argued, by these appellants, that the inclusion of lands in an offer which are included in a prior offer promotes the unethical practice of "top-filing," a time consuming and costly practice because of the additional work imposed both upon the applicants and the personnel of the Bureau of Land Management. They further contend that if

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1/ Lester C. Hotchkiss and Alpha L. Hotchkiss, Sacramento 051963, was rejected by the Manager's decision dated June 4, 1956. Lease offers of A. E. Wright, Sacramento 052078, and Duncan Miller, Sacramento 052317, were rejected by separate decisions of the Manager, dated July 20, 1956.

oil and gas lease applicants must include lands of greater acreage than they want, then filings would be made for the required minimum acreage and be followed immediately with partial withdrawals as to the unwanted lands.

The pertinent regulation, 43 CFR 192.42(d)(2), provides in material part as follows:

> "* * * Each offer must be for an area of not more than 2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any one of the following instances:
>
> "(2) Where the land is surrounded by lands not available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment."

A noncompetitive oil and gas lease will be issued to the qualified person who first submits a proper application for it. Transco Gas and Oil Corporation, et al., 61 I.D. 85 (1952); C. T. Hegwer, et al., 62 I.D. 77 (1955). A proper application is one made in conformity with the applicable statute and regulations. The above-cited regulation is clear and definite in its meaning and has been construed by the Department on many occasions. Cf. August A. Frymark, A-27162 (September 12, 1955); Eugene J. Bernadini, et al., 62 I.D. 231 (1955); Annie Dell Wheatley, 62 I.D. 292 (1955); Halvor F. Holbeck, 63 I.D. 102 (1956); Blanche W. Sweeney, A-27339 (July 16, 1956).

In the Wheatley case, supra, p. 294, the Department said:

> "The regulation is not in conflict with the express statutory provisions of the act, it is reasonably adapted to the carrying out of the purposes of the act, and, when considered in connection with the abuses it was designed to correct, it is a reasonable exercise of the discretion conferred upon the Secretary of the Interior by the act. It does not deprive an offeror of any right to which he may be entitled under the act ***. An applicant for the privilege of leasing public lands cannot complain because he is required to meet the requirements imposed upon all other applicants for that land. The Secretary merely requires that one who seeks to take advantage of the provisions of the Mineral Leasing Act shall do so in such a manner that abuses of the privileges shall be minimized and administrative difficulties lessened."

The Bernardini case, supra, p. 235, contained the following statement:

> "* * * the point of time in the existence of the offer which the regulation impliedly regards as critical and determinative is the very inception of the offer, in other words, the moment of its filing. Thus, inclusion in the offer at that time of a permissible amount of available acreage satisfies the regulation."

In the Holbeck case, supra, the applicant had included in his lease offer, total acreage in excess of the minimum requirement. However, prior to issuance of a lease he withdrew his offer as to part of the lands, thereby reducing the total acreage under application to less than 640 acres. The Department held that in such case the offer must be rejected as being in violation of the regulation requiring that an offer be for not less than 640 acres.

Thus it is evident that all the contentions of the appellant have been previously considered by the Department. The 640 acre regulation, being a valid exercise of the discretion conferred upon the Secretary of the Interior by the Mineral Leasing Act, an applicant for an oil and gas lease is properly required to include in his offer contiguous lands "available for leasing" at the time of filing. Lands under application, but not then under lease, are "available"lands. Natalie Z. Shell, 62 I.D. 417 (1955).

The case records show that the Hotchkiss offer was for less than 640 acres and that, at the time of its filing, there were available for leasing additional contiguous lands. Accordingly, no error being found in the rejection of the Hotchkiss offer, the Manager's decision rejecting that application, Sacramento 051963, is affirmed.

The record shows that the appellant, A. E. Wright, filed oil and gas lease offer, Sacramento 051990, for certain lands adjoining some of those applied for under Sacramento 052078, but that action on 051990 was suspended because of a possible conflict with an application for withdrawal filed by Fish and Wildlife Service. The proposed withdrawal, however, would serve to segregate the land only "to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal." 43 CFR 295.10. Since the proposed withdrawal, if effected, would segregate the land from all forms of appropriation except under the Mineral Leasing Act, the lands in offer 051990 were not unavailable for leasing on April 12, 1956, within the contemplation of 43 CFR 192.42(d)(2), when offer 052078 was filed. Natalie Z. Shell, supra. The fact that the available lands adjoining those in offer 052078 were under application by the same offeror, does not warrant a contrary conclusion. Although it is the appellant's expressed view that the apparent requirement of top filing one's own offer is "but an unnecessary and costly requirement," it is, nevertheless, clear that this Department is bound by its regulations and must follow them. McKay v. Wahlenmeier, 226 F. 2d, 35 (App. D.C., 1955).

Lease offer 052078, for less than 640 acres, embraced lands contiguous to those included in pending offer 051990, but did not include any of those lands, which, as shown above, were not unavailable for leasing on April 12, 1956. Accordingly, the Manager's decision rejecting offer 052078 is affirmed.

Duncan Miller's oil and gas lease offer, Sacramento 052317, was filed on May 25, 1956. It embraced the identical lands as the Wright offer (052078). It was rejected for the same reason as the Wright offer, the status of the lands contiguous to those applied for being shown to be the same on May 25, as on April 12. Therefore, the Manager's decision rejecting offer 052317 is affirmed.

L.C. and A.L. Hotchkiss, Wright and Miller are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application on which the appellants are seeking favorable action. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:
Messrs. Gilmore and Gilmore, Attys. for Appellants Hotchkiss and Wright--(Certified Mail);
Mr. Lester C. and Mrs. Alpha L. Hotchkiss (Regular Mail)
Mr. Duncan Miller (Certified Mail); Minerals Staff Officer (5);
Geol. Survey (15); Mr. John Sieker, Forest Service, Dept. of Agriculture (8);
Appeals List No. 1; Each case file; BF.

appeal to Sec

In reply refer to:

Los Angeles 0133150
Los Angeles 0137917
5.04g

appeal dismissed! decision affirmed
A-27623 — 7/28/58

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 21, 1957

Certified Mail
Return Receipt Requested

DECISION

Leland K. Whittier
N. Paul Whittier
Helen Whittier Woodward
Donald W. Whittier
Duncan Miller

: Oil and gas
Acquired Lands

Manager's Decision Affirmed

Leland K. Whittier, *et al.*, and Duncan Miller have filed separate appeals to this office from a decision dated February 14, 1956, of the Manager, Land Office, Los Angeles, California, which rejected their respective noncompetitive oil and gas lease offers, Los Angeles 0133150 and Los Angeles 0137917, filed under the provisions of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359). The Manager held that the lands applied for, being situated within the former Santa Ana Army Air Base, and having been reported as surplus pursuant to the Surplus Property Act of 1944, are excepted from leasing under the Mineral Leasing Act for Acquired Lands, *supra*, by section 3 thereof. In support of his ruling the Manager cited Departmental decision A-27076, *William O. Segerstrom*, decided March 31, 1955, involving similar offers to lease lands within the former Santa Ana Army Air Base. The Department held in that decision that the lands applied for, which were reported during 1947 to the War Assets Administration as surplus property, were presumably declared to be surplus pursuant to the act of 1944, 1/ and since section 3 of the Mineral Leasing Act for Acquired Lands excepts such lands from coverage under the Act, the Secretary of the Interior has no authority to issue oil and gas leases on these lands. The Department stated further, as noted by the Manager, that any oil and gas lease of the lands applied for must be issued by the General Services Administration, subject to the terms and conditions which that agency may prescribe.

1/ The Surplus Property Act was repealed and superseded by the Federal Property and Administrative Services Act of 1949 (40 U.S.C., 1952 ed., sec. 473 note).

Leland K. Whittier, et al., contend in their appeal, in substance, that the lands sought by them were removed from the surplus list, effective July 19, 1954, by the General Services Administration and that in view of the repeal of the Surplus Property Act of 1944, effective July 1, 1949, by the Act of June 30, 1949 (40 U.S.C., 1952 ed., sec. 473 note), any subsequent declaration that the lands are surplus would be ineffective to remove the power of the Department of the Interior to issue a lease of the lands. Duncan Miller, in his appeal, expresses the belief that the lands he seeks, which he acknowledged were transferred to the War Assets Administration on June 24, 1947, were not transferred in accordance with the Surplus Property Act of 1944. No documentary evidence in support of this belief was supplied by Mr. Miller, however.

Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., sec. 352) excepts from coverage under that Act lands which have been "reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944."

Information of record verifies the status of the lands applied for to be in the same category as the lands which were involved in the Departmental decision cited above. As stated by the Department in that decision, the lands within the former Santa Ana Army Air Base were reported during 1947 to the War Assets Administration as surplus property, presumably in accord with the Surplus Property Act of 1944, they were subsequently sold with reservations of the oil and gas and mineral rights to the United States, and at the present time the oil and gas rights therein are under the administrative jurisdiction of the General Services Administration. The Department stated further that, in a letter dated March 4, 1955, the General Services Administration reported it proposed to make a survey of the district in the near future and to offer the mineral rights for lease after public auction, as provided under the Surplus Property Law (40 U.S.C., 1952 ed., secs. 471-514), if it is determined that there is a sufficient interest in them to be of benefit to the Government.

For the reasons outlined, the lands are not available for leasing under the Mineral Leasing Act for Acquired Lands, supra. The Manager's decision was correct, and it is hereby affirmed.

Inasmuch as both applications have been rejected in entirety, it is unnecessary to make any determinations with respect to the priority assignable to either application as against the other to the extent they involve the same lands.

The appellants are allowed the further right of appeal to the Secretary of the Interior. If any of the appellants wishes to appeal herefrom, Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each case in which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Earl J Thomas
Director

Attachment

DISTRIBUTION:

Duncan Miller (Certified Mail)
Messrs. Chandler, Wright, Tyler and Ward, Attorneys at Law (Certified Mail)
Leland K. Whittier, N. Paul Whittier, Helen Whittier Woodward and Donald W. Whittier (Regular Mail)
Minerals Staff Officer (3)
General Services Administration (3)
Geological Survey (6)
Mr. John Sieker (8)
Appeals List No. 1
BF

appeal to Sec.

In reply refer to:
affirmed A-27620 7/28/58
Sacramento 052316
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 22, 1957

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated September 10, 1956, rejecting his noncompetitive oil and gas lease offer, Sacramento 052316, filed pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected in its entirety because of conflict with prior oil and gas lease offer, Sacramento 052120, pursuant to which a lease was issued to L. N. Hagood on that day, effective as of October 1, 1956.

The record discloses that Hagood filed lease offer, Sacramento 052120, on April 18, 1956; Miller filed his offer on May 25, 1956. The Miller offer conflicted in its entirety with the Hagood offer. In accordance with established procedure and practice, the junior filed application was held in suspense pending final adjudication of the first filed application. The lease was issued to Hagood and the Miller application was rejected on the same day. The record also indicates that the lands included in the Hagood offer were previously embraced in a lease, issued to Mr. Hagood, which lease was relinquished prior to the filing of his subsequent offer.

The appellant states that Hagood relinquished his prior lease for the sole purpose of refiling for the identical lands. He contends that such practice is illegal, and if recognized, would permit one to hold a lease in perpetuity.

The Mineral Leasing Act, supra, sets forth the several methods by which an oil and gas lease may be terminated. The regulations, 43 CFR Parts 191 and 192, implementing the statutes, provide for the orderly leasing of lands as well as for termination of such leases. Regulation 192.43, in effect at the time the prior lease was relinquished and when both subsequent lease offers were filed (Circular 1904, March 24, 1955, 20 F.R. 1778), provided in this connection that immediately upon notation of a relinquishment in the appropriate tract book record of the land office, the relinquished lands become available for further leasing. See M. A. Machris, et ano., 63 I.D. 161 (1956). There is no provision in the law or the regulations prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands held by him.

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955). Mr. Hagood, being shown to be a qualified lease offeror, had a statutory preference right to the issuance of a lease pursuant to his prior application therefor, which was properly honored. The appellant has not alleged, nor is it shown, that the subject lands were not available for leasing when Mr. Hagood filed his lease offer, or that he was not a qualified lease offeror.

Accordingly, the Manager's decision is affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Miller then he must serve a copy of all documents on the adverse party, Mr. L. N. Hagood, P. O. Box 966, Casper, Wyoming, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Acting Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. L. N. Hagood (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
BF

26514

appeal to Sec

Dismissed; Reversed & remanded 8-11-58

A-27607 65 ID

(Modified in Part A-27607 (Supp) 9-30-58)

In reply refer to:
Los Angeles 0151730
0151739
0151740

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 27, 1957

Certified Mail
Return Receipt Requested

DECISION

Franco Western Oil Company,
Duncan Miller,
Raymond J. Hansen,
Appellants.
L. N. Hagood,
Savoy Petroleum Company,
Appellees (Lessees).

Oil and Gas

Manager's Decision Affirmed

The appellants, above-named, have appealed severally to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated August 22, 1957, insofar as it rejected their respective noncompetitive oil and gas lease offers enumerated above, for the SE$\frac{1}{4}$ sec. 3, T. 11 N., R. 24 W., S.B.M., California. The lease offers, filed pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C. 1952 ed., sec. 226), were rejected to the extent shown for the reason that these lands were embraced in an outstanding oil and gas lease, Los Angeles 087429, which was assigned during its extended period and which was thereby extended for two years from the date of approval of the assignment under the provisions of 43 CFR 192.144(b).

Lease 087429 was issued to L. N. Hagood effective July 1, 1947. It was extended beyond its primary term of five years for another period of five years, and it was thus due to expire on June 30, 1957. On June 17, 1957, a partial assignment dated June 12, 1957, out of that lease, to the Savoy Petroleum Corporation, was filed for approval. The partial assignment was approved effective as of July 1, 1957; the partial assignment was segregated as lease 087429-A. The Manager, in approving the assignment, stated, "In accordance with 43 CFR 192.144(b) the lease term is considered further extended for two years from July 1, 1957."

The appellants filed their lease offers simultaneously at 10:00 o'clock A. M., July 1, 1957. The Manager held that, since the lands applied for were embraced in leases 087429 and 087429-A, which were not due to expire until the end of the two-year extended period (absent production of oil or gas in paying quantities), the lease offers were rejected, as shown above.

In substance, the appellants contend that the two-year extension beyond the tenth lease year is not authorized by law; that the approval of the assignment, effective after the expiration of the parent lease, could serve no useful purpose, could not serve to extend an expired lease, and was a nullity insofar as it affected the leasability of the above-described land, after expiration of the base term, to the first applicant who filed a proper offer for it. In addition, appellant Hansen contends that the two-year extension is not allowable where there has been no discovery of oil or gas on any portion of the lease during the primary or five-year extended term.

The question presented involves the effect on the lease term of the partial assignment from Hagood to Savoy Petroleum. The effect of such a partial assignment is covered by the following language of the Mineral Leasing Act, supra, (30 U.S.C., 1952 ed., sec. 187a) as amended by the Act of July 29, 1954 (68 Stat. 585):

> " * * * Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above-provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities." (Emphasis added).

The final two sentences of this section of the Act constitute the amendment provided in the Act of July 29, 1954, supra.

In the Solicitor's Opinion M-36398 (64 I.D. 135, December 14, 1956), it was determined that the partial assignment of an oil and gas lease during its extended 5-year term has the effect of continuing in force segregated leases of any undeveloped lands for a period of two years from the effective date of the assignment and so long thereafter as oil or gas is produced in paying quantities, regardless of whether such segregated leases constitute the assigned or the retained portions of the original lease.

In his opinion of June 4, 1957 (M-36443), the Solicitor held that partial assignments of undeveloped noncompetitive oil and gas leases filed and approved even on the last day of the extended 5-year term are effective to extend the leases segregated thereby for the period provided in the Act of July 29, 1954, supra. The Solicitor stated, in pertinent part, as follows:

> "You have also raised the question of whether a partial assignment filed and approved on the last day of the extended 5-year term of a noncompetitive lease would extend the segregated portions of the lease for 2 years under the 1954 amendment of section 30a of the leasing act * * * in view of the fact that, under the law and the regulations, the assignment would not be made effective until the first day of the succeeding month (68 Stat. 583, 30 U.S.C. sec. 187a; 43 CFR 192.140). It is my opinion that such an approved assignment would effectively extend the term of the segregated portions of the lease for the reason that the last moment of the last day of the lease term would be instantaneous with the first moment of the assignment. Humble Oil and Refining Company, 64 I.D. 5 (Jan. 30, 1957).

The effect of partial assignments of oil and gas leases in the final months of the lease term was further discussed by the Solicitor in his opinion M-36464 (August 8, 1957). It was therein stated that an assignment need not be approved prior to the expiration of the prior lease extension to make the further extension applicable. It is sufficient that the request for approval of the assignment be submitted prior to the expiration of the lease extension, the law affording retroactive effect to such approvals.

From the above it is clear that the partial assignment from Hagood to the Savoy Petroleum Company effectively served to extend the base lease as well as the assigned portion thereof for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities. Therefore, the appellants' lease offers, filed when the lands applied for were embraced in a valid existing lease, were properly rejected. Joyce A. Cabot, et al., 63 I.D. 122 (1956); Albert C. Massa, et al., 63 I.D. 279 (1956).

Accordingly, the Manager's decision is affirmed.

The Franco Western Oil Company, Duncan Miller and Raymond J. Hansen are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each separate application on which the appellant is seeking favorable action. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by any of the appellants herein then that party must serve a copy of all documents on the adverse parties, Mr. L. N. Hagood, P. O. Box 966, Casper, Wyoming and Savoy Petroleum Company by G. A. Holtz, Vice President, 323 Sill Building, Bakersfield, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Franco Western Oil Company (Certified Mail)
Mr. Duncan Miller (Certified Mail)
Mr. Raymond J. Hansen (Certified Mail)
Mr. L. N. Hagood (Regular Mail)
Savoy Petroleum Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (9)
Appeals List No. 1
BF

appeal to Sec
dismissed A-27624 - 7/14/58

In reply refer to:

Los Angeles 0137444
0137445
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 3, 1957

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	:	Acquired Lands Oil and Gas

Manager's Decisions Affirmed

Duncan Miller has filed separate appeals to this office from two decisions of the Manager, Land Office, Los Angeles, California, both dated January 10, 1956, rejecting his noncompetitive oil and gas lease offers, Los Angeles 0137444 and Los Angeles 0137445, filed January 3, 1956, under the provisions of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359). Lease offer Los Angeles 0137444 was rejected for the reason that the lands applied for are a part of a U. S. Naval Air Station and consequently are excluded from leasing under the Acquired Lands Leasing Act. Lease offer Los Angeles 0137445 was rejected similarly, because the lands sought are a part of the United States Naval Ammunition and Net Depot, Seal Beach, California, and therefore also are excluded from leasing under the Acquired Lands Leasing Act.

Mr. Miller states in his appeals that he believes the decisions are erroneous and that careful consideration will show that each lease offer is filed properly within the meaning and intent of the law.

Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., sec. 352), provides in part:

> "*** all deposits of *** oil, *** gas *** which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are *** (b) set apart for military or naval purposes ***) may be leased by the Secretary

> /of the Interior/ under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof.***"

The records disclose that the lands described in lease offer Los Angeles 0137444 were acquired by the United States for use as a naval air station and that they are under the jurisdiction of the Department of the Navy. Since these lands are set apart for naval purposes and are therefore expressly excluded from the leasing provisions of the Mineral Leasing Act for Acquired Lands, they are not available for leasing pursuant to the offer filed. The lands applied for under lease offer Los Angeles 0137445 were acquired by the United States for use as a part of the United States Naval Ammunition and Net Depot, Seal Beach, California, and they are still under the jurisdiction of the Department of the Navy, although jurisdiction over the oil and gas deposits in the lands was transferred to the Secretary of the Interior by Public Land Order No. 1204, dated August 8, 1955 (20 F.R. 157, August 12, 1955). Since the lands are set apart for naval purposes, they are excluded from the leasing provisions of the Mineral Leasing Act for Acquired Lands and consequently are not available for leasing pursuant to the offer filed.

The transfer to the Secretary of the Interior of jurisdiction over the oil and gas deposits in the lands listed in Public Land Order No. 1204 did not and could not have the effect of making them subject to leasing under the mineral leasing laws. The only authority which this Department has over the oil and gas deposits in the lands described in each lease offer is the implied authority which is vested in the Executive Branch of the Government to take protective measures in cases where lands owned by the United States and not subject to the mineral leasing laws are found to contain oil and gas deposits which are being drained by adjoining owners. 40 Op. Atty. Gen. 41. In the exercise of this authority, it is in the public interest to offer lands believed to be within the known geologic structure of a producing field for leasing on a competitive basis. A. P. Scott, A-25846, July 25, 1950.

The decisions of the Manager are correct, and they are hereby affirmed.

Mr. Miller is allowed the right of appeal herefrom to the Secretary of the Interior. If such appeal is taken, Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee in each case in which favorable action is sought. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR Part 221, contained in Circular 1950 as amended by Circular 1962. See Information Sheet attached.

C. R. Durlin
Acting Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Geological Survey (3)
Minerals Staff Officer (5)
~~Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (2)~~
Appeals List No. 1
VJR

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 052119
5.04g

December 2, 1957

Certified Mail
Return Receipt Requested

DECISION

George M. Brown : Oil and Gas

Appeal Dismissed

George M. Brown has appealed to the Director, Bureau of Land Management, from the decision of the Manager, Land Office, Sacramento, California, which rejected his offer, Sacramento 052119, to lease 760 acres of land in T. 29 S., R. 20 E., M. D. M., California, for oil and gas purposes under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer, which was filed on April 18, 1956, was rejected on May 14, 1956, because it embraced lands applied for in similar, prior offers to lease, Sacramento 052010 to 052019, inclusive, which were filed simultaneously on April 2, 1956. The Manager stated that a public drawing was held at 2:00 P.M., May 10, 1956, to determine the priority of filing among the simultaneous lease offers filed April 2, 1956, and that offer Sacramento 052014 was drawn No. 1; consequently, a lease was issued to the offerors thereunder, namely, Henry Casperson and James P. Witmer, 434 Douglas Building, Los Angeles 12, California, effective as of June 1, 1956.

The Manager's decision allowed Mr. Brown a right of appeal to the Director within 30 days from receipt of his decision, and the Manager stated in that decision and in subsequent correspondence with Mr. Brown that full compliance was required with sections 221.1 to 221.5 inclusive and other pertinent sections of the Department's rules of practice (43 CFR Part 221).

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> ". . .The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

The next section of the rules of practice, section 221.3, is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 . . . ."

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director. . .will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;. . . ."

Appellant's notice of appeal was filed on June 14, 1956. A statement of reasons should have been filed not later than July 16, 1956. No such statement has been received, and no request has been made for an extension of time in which to file the statement of reasons as provided for by section 221.97 of the rules of practice.

In accordance with the provisions of section 221.98 of the rules of practice and the decisions of the Department, the appeal is dismissed. Gerhard Evenson, 63 I.D. 331 (1956); Ray O. Bowersox, A-27472, decided May 27, 1957, and cases cited therein.

George M. Brown is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1957 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

In the event an appeal is filed the adverse parties to be served with notice thereof are Henry Casperson and James P. Witmer, 434 Douglas Building, Los Angeles 12, California.

Acting Director

Attachment

DISTRIBUTION:
Mr. George M. Brown (Certified Mail)
Messrs. Henry Casperson and James P. Witmer
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
Case File Sacramento 052014
EGillette

appeal to Sec - 8-18-58
affirmed A-27603
65 I.D.

In reply refer to:

Sacramento 019376
019377
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 3, 1957

Certified Mail
Return Receipt Requested

DECISION

Richfield Oil Corporation : Oil and Gas

Manager's Decision Affirmed

Richfield Oil Corporation has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated August 6, 1956, denying approval of agreements involving a transfer of interest in part of the lands in each of the above-noted leases from Universal Consolidated Oil Company to William C. McDuffie as Receiver of Richfield Oil Company of California.

The Manager considered the agreements as assignments of record title and rejected them on the grounds that they were never officially filed in the land office, that the instrument under Sacramento 019376 describes less than a legal subdivision, and that assignments of record title interest could not be approved as operating agreements without the consent of all parties involved.

These leases were issued November 13, 1939, to Universal Consolidated Oil Company as 10-year exchange leases under the Act of February 25, 1920 (41 Stat. 437), as amended by the provisions of Sec. 2(a) of the amendatory Act of August 21, 1935, 49 Stat. 679, 30 U.S.C., 1946 ed., sec. 223(a) 1/ The leases were issued in exchange for 20-year leases, Visalia 09301 and 09302, issued August 23, 1920, to the Devils Den Consolidated Oil Company and assigned to Universal Oil Company, predecessor to Universal Consolidated Oil Company, effective February 5, 1923.

1/ Repealed by sec. 14 of the Act of August 8, 1946, 60 Stat. 958.

On July 17, 1956, the Richfield Oil Corporation which is successor to Richfield Oil Company of California, filed applications for approval of agreements which previously had been regarded as assignments but which the appellant is now requesting be approved as subleases in the nature of operating agreements. Each application for approval contains copies of agreements, assignments, and correspondence relating thereto, shown as Exhibits "A" to "G" under 019376, and "A" to "F" under 019377.

In its application for approval the appellant states:

> "That on November 19, 1935 a compromise Agreement was entered into for the purpose of settling a controversy existing between Universal and William C. McDuffie, as receiver of Richfield Oil Company of California, hereinafter referred to as 'Richfield,' which agreement provided, among other things, for the transfer of certain rights and properties by and between Universal and Richfield, and set forth the provisions to be contained in the documents to be executed for this purpose.
>
> "That on January 15, 1936 an order was entered in the District Court of the United States, Southern Division of California, Central Division, in Equity Consolidated Clause No. S-125-J, approving said agreement of November 19, 1935, and authorizing Richfield to execute with Universal all instruments required by said agreement.
>
> "That pursuant to the provisions of said agreement dated November 19, 1935, and under said order of court dated January 15, 1936, by instrument designated 'Assignment' dated January 15, 1936, and instrument designated 'Mutual Agreement' dated January 15, 1936, hereinafter collectively referred to as 'Operating Agreement,' Universal transferred to Richfield, subject to the approval of the United States of America, the right to produce oil, gas and for other hydrocarbon substances from a depth greater than four thousand (4,000) feet from those portions of said United States Oil and Gas Lease, Serial No. Sacramento 019376 (formerly Visalia 09301, particularly described as follows:
>
> T. 26 S., R. 21 E. Mt. Diablo Meridian, California
> sec. 18- S½NE¼SW¼, S½S½SW¼
> sec. 30- W½NW¼, E½SE¼
> sec. 32- E½NE¼, E½NW¼
>
> together with the right of access through the upper zones of the premises above described * * *. "

A similar statement in respect to W½NE¼ sec. 30, T. 26 S., R. 21 E., appears in case file 019377.

The application for approval states that on June 14, 1956, Universal commenced the drilling of a well on fee land in section 32 into a zone below 4,000 feet, which is a diagonal offset to the lands covered by the agreement under consideration.

The application also states that although Richfield "cannot enter upon said lands covered by the Operating Agreement for the purposes set forth therein without the consent of the Secretary of the Interior, Universal also cannot enter upon said lands and operate the same."

The application states further than between November 18, 1935 and January 14, 1937, certain correspondence between the office of David R. Faries, Attorneys for Universal, and the General Land Office, attempted to ascertain informally whether this agreement would be approved, and the Office gave its opinion at that time that a conveyance of record title in terms of sand or zones, rather than of legal subdivisions, is not harmonious with efficient administration of oil and gas leases, but that substantially the same result could be accomplished by an operating agreement instead of outright assignment, and should an operating agreement be submitted in which record title remains in Universal and grants to Richfield exclusive operating rights to deep sand zones, the agreement would be considered with a view to recommending to the Department that it be approved. Copies of all correspondence are in the case files.

The application also states that on February 8, 1937, Universal addressed a letter to Richfield stating that if Richfield would prepare and submit a form of operating agreement it would be considered for execution, but that at various times from February 8, 1937, until the present time, Richfield has attempted to work out such an operating agreement without success.

Preliminary to any determination of whether the agreements herein involved can be approved, it is necessary to determine the exact nature of these agreements. Appellant's Exhibit "A", entitled "Assignment" and dated January 15, 1936, provides that the Assignor (Universal) "does hereby sell, assign, convey, transfer and set over * * * subject to the terms and conditions of an Agreement * * * executed concurrently herewith said lease dated August 23, 1920, insofar as it pertains to the right to produce oil, gas, and/or other hydrocarbon substances from a depth greater than four thousand (4,000) feet together with the right of access through the upper zones of the premises * * * ." Each such "Assignment" also lists that portion of the lands in each lease so assigned.

The "Mutual Agreement" also executed January 15, 1936, states that it is entered pursuant to the provisions of the agreement dated November 19, 1935. This agreement was "confirmed and approved, subject, however, to the fulfillment of the conditions contained in paragraph 4 of this order" by the United States District Court in the civil action cited earlier. Paragraph 4(d) of this order provided for "The execution by Universal of the agreements, assignments, and conveyances provided for in said proposed settlement set forth in said petition of said Receiver filed herein under date of November 26, 1935." The agreement of January 15, 1936, refers to the "Assignment" mentioned in the previous paragraph as "a conveyance covering production rights." It also provides in paragraphs 5, 6 and 7 for new causes of forfeiture and reserves a right of re-entry for breach of conditions.

However, the right of re-entry for breach of conditions in favor of Universal is balanced by identical provisions in favor of Richfield. In all substantial respects the obligations of both parties are identical. There is nothing in the "Assignment" or in the "Mutual Agreement" which would afford a sufficient predicate for the landlord - tenant relationship between Universal and Richfield which the appellant urges. No drilling requirement is imposed on Richfield which is not imposed on Universal. We believe that the instruments taken together do not spell out the sublease in the nature of an operating agreement, suggested by the appellant and, further believe that such a relationship can be raised only by conjecture.

Although it is true that an assignment of a lease requires a parting with the whole estate of the assignor and that anything short of this is not an assignment but a sublease, a careful reading of the provisions of the documents presented, reveals that every right vested in Universal under the lease is in turn vested in Richfield in respect to the portions of the leases transferred by these "Assignments" and the "Mutual Agreement." Since, therefore, the whole estate of the assignor in the lands or deposits involved is transferred, the documents submitted must be considered assignments.

Having determined that the documents presented are assignments it is now possible to consider how they should be treated by the Bureau.

Part of the lands assigned in Sacramento 019376 are described in less than legal subdivisions, and in both cases the transfer covers only the sands or zones below 4,000 feet, in the leases. The statute says "That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision." Act of February 25, 1920 (41 Stat. 437) as amended by the Act of August 8, 1946 (60 Stat. 955), 30 U.S.C. sec. 187(a). The regulations (43 CFR 192.140) provide similarly, "An assignment of a separate zone or deposit of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence."

This has been the consistent policy of the Department, and in the instant cases the appellant has failed to establish by clear and convincing evidence that approval of assignments involving both separate zones and parts of legal subdivisions is a necessity. Nor is the case cited by the appellant, Cecil W. Smith, Susan M. Wight, Billings 038815 and 021056(b), July 1, 1954, necessarily inconsistent with this long established policy for it was clearly set forth therein that such approval was given to assignments only if they involved no more than overriding royalty interests or operating rights.

The regulations in regard to requirements for filing of assignments, 43 CFR, 1954 ed., 192.141, provide in applicable portion:

> "* * * (2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties.
>
> "(c) * * * Assignments of record title interests must be filed in triplicate."

The requirement that an assignment must be filed for approval within 90 days from the date of final execution was first promulgated on December 12, 1944, 9 F.R. 15005. This was an amendment of an earlier regulation (Circular No. 1504) on March 9, 1942, 7 F.R. 2246, which allowed only 30 days from the date of final execution until the date of filing. Assuming without deciding that these regulations were not retroactive to assignments executed prior to promulgation of the regulations it can hardly be said that the appellant has exercised due diligence in the matter when he did not submit assignments for approval until more than 20 years after their execution and 14 years after publication of the regulations.

Although the Manager erred in holding that the applicant did not submit any signed copy of the agreements, there can be no question that the applicant did not submit three original executed counterparts of each of the agreements, as required both by statute and by regulation. In the absence of three original executed counterparts, these assignments cannot be approved. See David L. Mills, A-26949 (September 27, 1954).

Furthermore, it must be noted that the assignments when executed were a transfer of parts of two leases, both of which terminated when on November 13, 1939, new exchange leases were issued in lieu thereof pursuant to section 2(a) of the Act of August 21, 1935, supra.

Accordingly, the decision of the Manager is affirmed, as modified herein.

Richfield Oil Corporation is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each case in which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If an appeal is taken by Richfield Oil Corporation, then it must serve a copy of all documents on the adverse party, Universal Consolidated Oil Company, c/o Gilmore and Gilmore, Attorneys at Law, 301 Crocker-Anglo Bank Building, 1007 Seventh Street, Sacramento 14, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Acting Director

Attachment

DISTRIBUTION:

Mr. John F. Deeds, Attorney for Appellant (Certified Mail)
Richfield Oil Corporation (Regular Mail)
Gilmore & Gilmore, Attorneys at Law (Certified Mail)
Universal Consolidated Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
VJR

L In reply refer to:
Los Angeles 0135039
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 11, 1957

Certified Mail
Return Receipt Requested

DECISION

C. E. Strange : Oil and Gas

Appeal Dismissed
Case Remanded

C. E. Strange has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated July 13, 1956, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0135039 filed August 9, 1955, under section 17 of the Mineral Leasing Act, as amended, (30 U.S.C., 1952 ed., sec. 226).

On November 29, 1957, Mr. Strange withdrew his lease offer. Accordingly the appeal has become moot and it is therefore dismissed. The case record is being returned to the Land Office, for further appropriate action, including the refund of any moneys due the offeror.

For the Director
John B. Piccolo

DISTRIBUTION
Mr. C. E. Strange (~~Certified~~ Regular Mail)
Geological Survey (3)
Minerals Staff Officer (5)
Appeals List No. 1
VJR
LO(Los Angeles)with case record Los Angeles 0135039

In reply refer to:

Sacramento 042130
052827
5.04g

December 27, 1957

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

J. R. Dorsey : Oil and Gas
Lesh C. Forrest :

Manager's Decisions Affirmed

An appeal has been taken to this office by J. R. Dorsey from a decision dated September 19, 1956, of the Manager, Land Office, Sacramento, California, which denied his request for reinstatement of his oil and gas lease Sacramento 042130 and from a decision dated September 5, 1956, which terminated the period of liability under the $1,000 bond furnished to insure compliance with the lease terms. Mr. Dorsey also appeals from the action of the Manager in noting the lease as having terminated on September 4, 1956, for nonpayment of rental, on the land office records, and in holding a public drawing on September 19, 1956, to determine priority of filing among simultaneous lease offers received for the same lands on September 6, 1956.

The records disclose lease Sacramento 042130, which was issued on September 1, 1950, pursuant to Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), for a primary term of five years and so long as oil or gas is produced in paying quantities, was extended for a period of five years, commencing September 1, 1955, and so long thereafter as oil or gas is produced in paying quantities, under the amendatory leasing act of July 29, 1954 (68 Stat. 585), no discovery of oil or gas having been made on the leasehold during the primary five-year term of the lease and the lands therein not being situated within the known geologic structure of a producing oil or gas field on the date of expiration of the primary five-year term of the lease, August 31, 1955. Rental for the seventh lease year in the amount of $82.50, not having been received in the land office prior to September 4, 1956, the first official working day after the anniversary date of the lease, which fell on a Saturday, the Manager noted the termination of the lease in accordance with the provisions of the amendatory leasing act of July 29, 1954, supra, upon the official tractbook records of the Land Office, Sacramento, California, at 4:30 P.M. on September 5, 1956. Two offers to lease the same lands were received in the land office simultaneously on September 6, 1956, and in a drawing held on September 19, 1956, Lesh C. Forrest was the successful offeror (Sacramento 052827). The record shows also that Mr. Dorsey submitted lease offer Sacramento 052838 for the same lands on September 11, 1956.

In his appeal Mr. Dorsey states he was unaware that the law under which his extended lease had been granted provided for automatic termination for failure to pay rental on or before the anniversary date of the lease, that he was never given notice of this provision of the law or of the regulation pertinent thereto, contained in 43 CFR 192.161a (Circular 1904, March 24, 1955, F.R. 1778), and that he did not receive a notice from the land office that the seventh year's rental was due, though he had received such notices under the lease in previous years. Finally, he raises the question whether rental was in fact due for the seventh lease year, claiming that this was the second year of the extended lease and the regulations provide that no rental is required for the second year of a lease.

The amendatory leasing act of July 29, 1954, supra, the authority under which lease Sacramento 042130 was extended for five years commencing September 1, 1955, provides, inter alia, for the automatic termination by operation of law of any lease on which there is no well capable of producing oil or gas in paying quantities upon failure of the lessee to pay rental on or before the anniversary date of the lease. By regulation this provision of the law applies to leases issued or extended after July 29, 1954, and to leases in which the lessees have elected to subject their leases to the automatic termination provisions of the statute (43 CFR 192.161a). Lease Sacramento 042130 was extended pursuant to the provisions of the cited law; therefore, under the Departmental regulation cited, the automatic termination provision of the law was applicable to the extended lease to the same extent as other regulations promulgated pursuant to the amendatory act of 1954. The pertinent Departmental regulation referred to provides as follows:

> "Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to section 192.120, on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of the lease. * * * The termination of the lease for failure to pay the rental must be noted on the tractbook * * *, of the appropriate land office. Until such notation is made, the lands included in such lease are not subject to, nor available for, leasing. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected."

There being no well on the leasehold under Sacramento 042130 capable of producing oil or gas in paying quantities on the anniversary date of the lease, the lease therefore terminated automatically by operation of law upon the failure of the lessee to pay the rental on or before September 4, 1956.

The alleged reliance of the lessee upon his erroneous belief that he would receive a notice of rental due from the land office, as he had during the primary term of the lease, is not a ground for modifying the action of the Manager in noting the lease as terminated, since the lessee is conclusively presumed to know the terms of his lease and the applicable law. Robert Uptain, A-26956 (October 25, 1954). The courtesy notice of rental due for the seventh lease year, which was sent him on August 1, 1956, by the Land Office, was not requisite to termination of the lease for failure to pay rental; consequently, whether or not this notice was received could not affect the obligation of the lessee under the lease to pay the rental in advance on or before the anniversary date of the lease.

The seventh year's rental in the amount of $82.50 was properly computed at the rate of 50 cents an acre or fraction thereof for the lands involved in the lease, 164.47 acres, in accordance with Schedule A of the lease, incorporated therein by section 2(d) of the lease.

The Manager was not authorized to accept rental tendered after termination of the lease and thereby to reinstate the lease. His decision refusing to do so was correct, and it is hereby affirmed. His decision terminating liability under the lease bond was also correct. Both decisions are affirmed, as is his action in noting the lease as having terminated September 4, 1956, for failure to pay the seventh lease year's rental on or before that date, there being no well on the leasehold capable of producing oil or gas in paying quantities.

The official tractbook records of the Land Office having been noted as to the termination of the lease, the lands were available for further filings on September 6, 1956, at 10:00 A.M. Since the Department is under a mandatory duty, imposed by Section 17 of the Mineral Leasing Act, as amended, supra, to lease land which is not within the known geologic structure of a producing oil or gas field to the qualified person who first submits a proper application for it (C. T. Hegwer, 62 I.D. 80), it was proper for the Manager to hold the public drawing to determine the priority of filing among the two simultaneous lease offers received September 6, 1956, all else being regular.

J. R. Dorsey is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each case in which favorable action is sought. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by J. R. Dorsey, then he must serve a copy of all documents on the adverse party, Lesh C. Forrest, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal. The address of Lesh C. Forrest is 2417 Chester Lane, Bakersfield, California.

If no appeal is taken herefrom, this decision will become final 30 days from notice hereof upon the appellant. In that event the records will be remanded to the Land Office and the Manager will issue a lease pursuant to the offer Sacramento 052827 of Lesh C. Forrest and reject the lease offer Sacramento 052838 which was filed for the same lands by J. R. Dorsey on September 11, 1956.

Earl J Thomas

Acting Director

Attachment

DISTRIBUTION:

Mr. George H. Soule, Consultant on Mining, Minerals and Public Lands, HR.
Mr. J. R. Dorsey (Certified Mail)
Mr. Lesh C. Forrest
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1

VJR

In reply refer to:
Sacramento 071115
[illegible]

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January [illegible], 195[illegible]

Certified Mail
Return Receipt Requested

DECISION

Herman Miller : Oil and Gas

Manager's Decision Affirmed

Herman Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated August 15, 1956, rejecting his noncompetitive oil and gas lease offer, Sacramento 071115, filed May 25, 1956, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The lease offer was rejected on the grounds that the lands applied for are within the known geologic structure of the [illegible] field, and can be leased only by competitive bidding.

Mr. Miller in his appeal disputes the finding of the Manager and states that a consideration of the [illegible] and present history of the land involved will show that it was not within the known geologic structure of a producing oil and gas field, within the meaning of the Act, at the date his offer was filed. The appellant has not submitted any evidence to support his statements, however.

The Mineral Leasing Act, supra, provides in pertinent part as follows:

> * * * * When the lands to be leased are within any known geologic structure of a producing oil or gas field, they shall be leased to the highest responsible, qualified bidder by competitive bidding under general regulations * * *. (30 U.S.C., 1952 ed., Supp. [illegible], sec. 226.)

In view thereof, an application for a noncompetitive oil and gas lease is properly rejected where the land applied for is within the known geologic structure of a producing oil and gas field on the date the offer is filed. See Shepherd [illegible] and [illegible] A-[illegible], [illegible].

[illegible] within 30 days after [illegible] appellant in time to be received there [illegible] accompanied by [illegible] [illegible] must be accompanied [illegible] statement of reasons [illegible] the Secretary of the Interior [illegible]

If appeal is taken by [illegible] Dorsey, [illegible] Morrow, [illegible] Director [illegible]

If an appeal is taken [illegible]

Acting Director

Attachment

Distribution:

Mr. [illegible] (Certified Mail)
Mrs. [illegible] Dorsey (Certified Mail)
Mr. [illegible] Morrow
[illegible]
Geological Survey (2)
Appeals [illegible] No. 1

[illegible]

appeal to Sec

In reply refer to:
Affirmed A-27644 9-22/58
Sacramento 052315
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 10, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated August 15, 1956, rejecting his noncompetitive oil and gas lease offer, Sacramento 052315, filed May 25, 1956, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The lease offer was rejected on the grounds that the lands applied for are within the known geologic structure of the Coalinga West Side Field, and can be leased only by competitive bidding.

Mr. Miller in his appeal disputes the finding of the Manager and states that a consideration of the full and present history of the land involved will show that it was not within the known geologic structure of a producing oil and gas field, within the meaning of the law, on the date his offer was filed. The appellant has not submitted any evidence to support his statements, however.

The Mineral Leasing Act, supra, provides in pertinent part as follows:

> " * * * When the lands to be leased are within any known geologic structure of a producing oil and gas field, they shall be leased to the highest responsible, qualified bidder by competitive bidding under general regulations * * *" (30 U.S.C., 1952 ed., Supp. IV, sec 226).

In view thereof, an application for a noncompetitive oil and gas lease is properly rejected where the land applied for is within the known geologic structure of a producing oil and gas field on the date the application was filed. See Stanolind Oil and Gas Company, A-27326, July 12, 1956.

A departmental regulation, 43 CFR, 1954 ed., 192.6, places the duty of determing the boundaries of known geologic structures of oil and gas fields upon the Director of the Geological Survey. In a report dated October 29, 1957, the Director of the Geological Survey advised the Bureau that as of the date of the filing of this offer the lands embraced therein were within the known geologic structure of the Coalinga West Side Field as defined on April 10, 1946. The Department has held that the Geological Survey's definition of a producing oil and gas structure will not be disturbed in the absence of a clear showing that the definition was improperly made. Lillie Mae Yates, A-26271 (February 8, 1952); Stanolind Oil and Gas Company, supra.

Since the appellant has submitted no evidence which would refute these findings, and since none appears in the record, there is no basis for holding that the Geological Survey's finding was erroneous or improperly made. Under the circumstances there does not appear to be any basis for changing the Manager's decision, and therefore that decision is hereby affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

DISTRIBUTION:

Duncan Miller (Certified Mail)
Geological Survey (3)
Minerals Staff Officer (5)
Appeals List No. 1
VJR

appeal to Sec.
affirmed A-27649-8-6-58

In reply refer to:
Sacramento 052828
052998
053027
053028
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	:	Oil and Gas

Manager's Decision Affirmed

The Department's decision of September 24, 1957, A-27466, reversed the decision of this Bureau dated January 11, 1957, and remanded the above-noted case records to this Bureau for further consideration of the appeals of Mr. Duncan Miller, involving the subject records, on their merits. The appeals were taken from decisions of the Manager, Land Office, Sacramento, California, rejecting the above-noted non-competitive oil and gas lease offers which had been filed by Mr. Miller under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Each offer was rejected because of conflict with a previously issued lease.

Mr. Miller in his appeals challenges the validity of the previously issued leases, stating that the prior lease offers were illegitimate and invalid and that any leases issued thereunder would be null and void. His contention is based on the fact that these prior offers were filed shortly after relinquishments of four other leases, each in its extended term and embracing the same lands, had been noted on the tractbook. Mr. Miller alleges that each of these relinquished leases had been held by the same person (or his relative) who later filed each of the offers that defeated his (Miller's) filings.

The pertinent data relative to all the leases and lease offers will be found in the appendix.

Although Mr. Miller questions the propriety of allowing a lessee to file a relinquishment, only to submit a new offer for the same lands in his own name or in the name of a relative, such a practice is not at present contrary to law or Departmental regulation. The Department has stated in Thomas F. McKenna, Forrest H. Lindsay, 62 I.D. 376, as follows:

> "* * *when a lessee files his relinquishment of an oil and gas lease in the appropriate land office, he exercises the right granted to him by section 30(b) of the Mineral Leasing Act; he voluntarily ends his lease relationship with the United States as of the date of the filing of the relinquishment; * * *Thereafter, such a person stands on the same footing as any other person who desires to acquire an oil and gas lease on the land."

The law provides (30 U.S.C., 1952 ed. Supp. IV, sec. 226), inter alia, that:

> "* * * When the lands to be leased are not within any known geologic structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under said sections shall be entitled to a lease of such land without competitive bidding."

Since the Department has found that a lessee who relinquishes his lease stands on the same footing as any other person who desires to acquire an oil and gas lease, and if he is the person first making application for a new lease and he is otherwise qualified to hold a lease, he shall be entitled to such a lease once it is determined that a lease is to issue. See Stanley C. Woods, A-27382, November 6, 1956.

Once the determination was made that the prior lease offers were valid, the leases were properly issued, and all subsequent offers for the same lands were properly rejected.

Accordingly, the decisions of the Manager are correct, and they are hereby affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee for each separate lease offer on which appellant is seeking favorable action. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Duncan Miller, then he must serve a copy of all documents on the adverse parties, L. N. Hagood, Post Office Box 966, Casper, Wyoming; Richard R. Thorup, 512 Ellis Street, King City, California; Lester C. and Alpha L. Hotchkiss, 4239 Tyler Street, Fresno, California; and Thomas Connell, 453 South Spring Street, Los Angeles, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION

Mr. Duncan Miller (Certified Mail)
Mr. L. N. Hagood
Lester C. and Alpha L. Hotchkiss
Mr. Thomas Connell
Geological Survey (12)
Minerals Staff Officer (5)
Appeals List No. 1
VJR

APPENDIX

Miller Offers		Conflicting Leases			Relinquished Leases		
Serial Number	Date Filed	Serial Number	Date Filed	Lessee	Serial Number	Lessee	Noted On Tractbook
052828	September 6, 1956	052717	August 23, 1956 10:00 A.M.	L. N. Hagood	040291	Mary C. Hagood	August 23, 1956 9:00 A.M.
052998	October 17, 1956	052673	August 13, 1956 10:04 A.M.	Thomas Connell	043545	Thomas Connell and Emily K. Connell	August 10, 1956 4:30 P.M.
053027	October 31, 1956	052856	September 17, 1956 10:00 A.M.	Richard R. Thorup	036932	Shell Oil Company (Original Lessee Helen R. Thorup)	September 14, 1956 4:00 P.M.
053028	October 31, 1956	052613	July 27, 1956 9:04 A.M.	Lester C. Hotchkiss and Alpha L. Hotchkiss	042157	Lester C. Hotchkiss and Alpha L. Hotchkiss	July 26, 1956 3:30 P.M.

In reply refer to:
Sacramento 052761
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 22, 1958

Certified Mail
Return Receipt Requested

DECISION

Thomas Connell : Oil and Gas
:
:

Manager's Decision Affirmed

Thomas Connell has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated September 13, 1956, rejecting, in its entirety, his noncompetitive oil and gas lease offer filed pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected for the reason that the "offer to lease was received in the land office at 10:43 a.m. on September 4, 1956, too late to be considered in a drawing. Other offers to lease for the same lands were filed simultaneously at 10:00 a.m. September 4."

The appellant contends that inasmuch as his application was delivered by the post office in the first mail, although the mail delivery on that date was not in accordance with the usual practice, but was later than 10:00 a.m., it should be considered as having been filed at the opening of business, viz., 10:00 a.m., September 4.

An oil and gas lease offer may be filed by the offeror in person, or he may use the United States mails as his agent for delivering a letter to the local land office. An offer will be considered filed when it is received in the proper office during business hours. 43 CFR 192.42 (b). In consonance with such regulation, Instruction 4, on the reverse side of the lease offer states in pertinent part, that "The term 'filing' means the actual receipt of the offer in the proper land office." Under the quoted regulation and instruction, a "filing" is not complete until the document is delivered to the proper office. Even if, as claimed by the appellant, the letter, in the usual course of the mails, could have reached the Land Office by 10:00 a.m., the fact nevertheless remains that the offer was not filed at that time, "for a paper is considered filed only at a time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was negligent." H. P. Saunders, Jr., 59 I.D. 41, 43 (1945); John J. Farrelly, et al., 62 I.D. 1 (1955).

Obviously the receipt of the appellant's lease offer at 10:43 a.m. may not be considered as having been filed at any time earlier than when actually received in the Land Office. To this extent the Manager's decision was correct.

A noncompetitive oil and gas lease will be issued to the qualified person who first submits a proper application for it if a lease is to be issued for the lands. That person, if otherwise qualified to hold a lease, has a statutory preference right which must be honored. C.T. Hegwer, et al., 62 I.D. 77(1955); Transco Gas & Oil Corp., et al., 61 I.D. 85 (1952); 30 U.S.C. 226. In this vein it has been the long established policy of the Department to hold a junior filed application in suspense pending final adjudication of the senior filed applications, but upon favorable consideration of the first filed application, the later filed application or applications must be rejected.

In the instant case the Manager rejected the junior filed application prior to final adjudication of the earlier filed applications. This was error. However, the Manager later determined that the earlier filing lease offerors were entitled to leases for the lands involved in this appeal and leases for those lands have been issued to them. Therefore, since no useful purpose would be served by reinstating the appellant's lease offer, which would perforce be rejected because of the properly issued leases, the Manager's decision is affirmed.

Mr. Connell is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Connell, then he must serve a copy of all documents on the adverse parties, Messrs. Peter J. and Paul B. Zydner, 1122 King Street, Bakersfield, California (Sacramento 052756) and Mr. Victor P. Paganucci, 517 Merchant Street, Sacramento, California (Sacramento 052755), within 15 days after filing the documents, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Thomas Connell (Certified Mail)
Messrs Peter J. and Paul B. Zydner (Regular Mail)
Mr. Victor P. Paganucci (Regular Mail)
Case Records Sacramento 052755 and 052756.
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List 1
BF

appeal to Sec

8-6-58 Affirmed A 27665

In reply refer to:
Sacramento 052808
052809
052810
052812
052829
052878
052988
052989
052990
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

January 27, 1958

Duncan Miller : Oil and Gas

Manager's Decisions Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Sacramento, California, dated September 26, October 8, 17 and 18, 1956, rejecting his noncompetitive oil and gas lease offers, identified above, filed pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Each offer was rejected in its entirety because of conflict with prior issued oil and gas leases or because of conflict with prior oil and gas lease offers, pursuant to which leases were issued.

The record discloses that leases were issued and outstanding for the identical lands as embraced in offers Sacramento 052810, 052812, and 052878, prior to the filing of the noted offers by Miller for the same lands. The remaining Miller offers were filed subsequent to other properly filed and valid lease offers embracing the same lands. All the lands described in the nine Miller offers are now embraced in issued leases; all the lands were previously embraced in prior leases which were relinquished and filed for by the present holders of the existing leases after appropriate notations of relinquishments of the prior leases were made on the tract books of the Land Office.

The appellant states that the parties who filed prior to him were the identical parties, or their agents, who had previously held leases for the same lands and who filed the several relinquishments, and that the prior leases were relinquished solely for the purpose of refiling. He contends that such practice is illegal, and if recognized, would permit one to hold a lease in perpetuity.

Lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for further leasing, and applications filed for such lands must be rejected. Joyce A. Cabot, et al., 63 I.D. 122 (1956), and cases cited therein. Since the lands embraced in offers Sacramento 052810, 052812, and 052878, were included in existing, prior-issued leases at the time of filing of the appellant's lease offers, those lease offers were properly rejected.

The Mineral Leasing Act, supra, sets forth the several methods by which oil and gas leases may be terminated. The regulations, 43 CFR parts 191 and 192, implementing the statutes, include provisions for the orderly leasing of lands as well as provisions concerning the termination of such leases. Regulation 192.43 (Circular 1904, March 24, 1955, 20 F.R. 1778), in effect at the time the prior leases were relinquished (for which lands subsequent lease offers Sacramento 052808, 052809, 052829, 052988, 052989, and 052990 were filed), provided in material part, in this connection, that immediately upon notation of a relinquishment in the appropriate tract book of the land office, the relinquished lands become available for further leasing, unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. See M. A. Machris, et al., 63 I.D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Cf. Frederick D. Anderson, A-26911 (July 28, 1954).

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955). The records show the prior leases of lands involved in the appeals relating to the Miller offers Sacramento 052808, 052809, 052829, 052988, 052989, and 052990, were relinquished and subsequently again leased as shown on the attached sheet, designated "A". Since, in the circumstances, no inference of impropriety may be drawn from the facts, and leases have been issued to the senior applicants, who have been determined to be entitled to the issuance of leases pursuant to their prior filed offers, the Miller offers were properly rejected for these lands.

Accordingly, the Manager's decisions are affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee with respect to each lease offer in which favorable action is sought. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Miller then he must serve a copy of all documents on the adverse party in each case appealed from within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accomapnied the Notice of Appeal.

If appeal is taken in the case of lease offers Sacramento 052808, 052809, or 052988, the adverse party to be served is Signal Oil and Gas Company, 811 West Seventh Street, Los Angeles 17, California.

In the event of appeal involving offer Sacramento 052810 the adverse party is Colleen S. Lynn, 3436 Beethoven St., Los Angeles 65, California.

In the event of appeal involving offer Sacramento 052829, the adverse party is James P. Witmer, 257 So. Spring St., Los Angeles 12, California.

In the event of appeal involving offer Sacramento 052989, the adverse party is The Texas Company, 929 So. Broadway, Los Angeles,15, California.

In the event of appeal involving offer Sacramento 052990, the adverse party is Paul S. Brown, 354 So. Spring St., Los Angeles,13, California.

In the event of appeal involving offers Sacramento 052812 and 052878 the adverse party is Continental Oil Company, 1137 Wilshire Boulevard Los Angeles 17, California.

Edward Woozley

Attachment
Director

DISTRIBUTION
Duncan Miller (Certified Mail)
Signal Oil and Gas Company (regular mail)
Colleen S. Lynn (regular mail)
James P. Witmer (regular mail)
The Texas Company (regular mail)
Paul S. Brown (regular mail) and Continental Oil Company (regular mail)
Minerals Staff Officer (5)
Geological Survey (27)
Appeals List No. 1
BF

ATTACHMENT A

Lease	Date Relinquishment was Filed	Date on which Relinquishment was Noted on Land Office Tract Books	Date of Filing of Subsequent Lease offer, Serial Number Thereof, and Date of Lease Issued Pursuant Thereto.	Date of Filing and Serial Number of Lease offer of Mr. Miller for the Same Lands	
Sacramento 038027	August 16, 1956	3:45 P.M. August 17, 1956	Sacramento 052702 filed August 20, 1956; lease issued October 1, 1956	September 4, 1956	052808
Sacramento 035452	August 29, 1956	8:00 A.M. August 30, 1956	Sacramento 052739, filed 10:00 A.M., August 30, 1956; lease issued November 1, 1956	September 4, 1956	052809
Sacramento 040858	August 7, 1956	8:30 A.M., August 9, 1956	Sacramento 052657 filed 10:01 A.M., August 9, 1956, lease issued October 1, 1956	September 6, 1956	052829
Sacramento 034618	September 18, 1956	8:55 A.M., September 19, 1956	Sacramento 052868 filed 10:01 A.M., September 19, 1956; lease issued November 1, 1956	October 16, 1956	052988
Sacramento 037448-A 037448-B	September 17, 1956	9:00 A.M., September 18, 1956	Sacramento 052862 filed September 18, 1956; lease issued November 1, 1956	October 16, 1956	052989

ATTACHMENT A CONT.

Sacramento 035231	September 21, 1956	9:00 A.M., September 24, 1956	Sacramento 052884, filed 10:00 A.M., September 24, 1956; lease issued November 1, 1956	October 16, 1956	052990

In reply refer to:

Los Angeles 0115965
5.04g

January 28, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Harold L. Pierce : Oil and Gas

Decision of Manager Affirmed

Harold L. Pierce has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated April 15, 1955, rejecting in part his oil and gas lease offer on the basis of a Geological Survey report that the land is not prospectively valuable for oil or gas. Mr. Pierce's offer had been filed on June 17, 1954.

To controvert this finding, Mr. Pierce, in his appeal, stated that The Texas Company was drilling a test well only a few miles east of the land covered by his lease offer, and that magnetometer crews from other companies were active in the area. He also submitted a report on the Geology of the San Jacinto Quadrangle, California Bureau of Mines, Vol. 27, pp. 512-39 (1931), which, he contended, showed that there were in the vicinity ancient sedimentary formations from which the possibility of the presence of oil or gas might be inferred.

On July 20, 1953, eleven months before Mr. Pierce's offer was filed, the State of California applied to select the same tract of land under the Act of February 28, 1891 (43 U.S.C. 1952 ed., secs. 851, 852), which grants the States the right to make indemnity selections. The land selected by the State must be from the unappropriated nonmineral surveyed public land. 43 CFR 270.1. If land contains oil and gas, or is prospectively valuable for oil and gas, it is not, under the provisions of the 1891 statute, subject to selection by the State. But the provisions of this original State Indemnity Selection Act must be considered in conjunction with the Act of July 17, 1914 (30 U.S.C., 1952 ed., sec. 121) which authorizes the selection of lands valuable for oil and gas, with the reservation of the oil and gas content to the United States. If any State is desirous of taking advantage of this further right in selection of lands it may do so. Its title will be restricted and it will have no more to convey than is granted. United States v. State of New Mexico, 54 I.D. 175 (1933).

Therefore, even if the land were found to be prospectively valuable for minerals, the State could obtain title to the surface rights, and the appellant could still obtain from the United States a lease to prospect for oil and gas on the same lands.

The unusual factual situation here presented is that the State selection was made on the application, and for the benefit, of Harold L. Pierce.

The nonmineral charcter of land selected by a State for educational purposes must be shown by the statement of some responsible party, having and testifying to a personal knowledge of the land. 43 CFR 270.1. At the behest of Mr. Pierce a statement was made by Mr. George C. Wood, who, after stating that "no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that the land is unappropriated and essentially non-mineral in character. . ." continued that he is "aware that H. L. Pierce holds certain mining claims on the above described properties. . ."

The applicant is thus attempting to assert rights to this land on two opposing theories: first, that it is prospectively valuable for oil and gas, and therefore a lease should issue to him to develop the land, and second, that the land, being nonmineral in character, is suitable for selection by the State of California under the Act of February 28, 1891. In furtherance of these applications, the appellant has made or procured inconsistent statements as to the mineral value of the land.

In all fairness to him, it appears that he is under the impression that the State would obtain title subject to the provisions of the Act of July 17, 1914, and that the oil and gas content would be reserved to the United States. His application, therefore, has been submitted with the view of obtaining for himself the right to develop the oil and gas potential of the land after he obtains, from the State, the surface rights.

When the Geological Survey found the land to be not prospectively valuable for oil and gas, Mr. Pierce was asked to relinquish his mining claims on this tract, in order that the selection of the State, initiated on his behalf, might be allowed. On November 7, 1956, Mr. Pierce had recorded in the Official Records of Riverside County, California, a relinquishment of his mining claims. He specifically exempted from his release "any interests that I may have in the Oil and Gas Federal Lease 0115965 and others pending on said property." This was considered an adequate release to permit the land to be classified as proper for selection and acquisition by the State of California. On December 12, 1956, the State indemnity selection for these lands was allowed.

A copy of the list of selected lands was posted in the land office; the required notice was published in a daily newspaper once a week for five weeks; no protests or appeals were received; the State has paid all the required fees, and has submitted a certificate showing that the base lands are unencumbered. The necessary nonmineral, nonsaline, nonoccupancy statement was filed, as well as a statement attesting to the absence of springs or waterholes. Cf. 43 CFR 270.1 et seq. All that remains to be done is to prepare and transmit to the patent issuing officer a clear list, which, upon being signed and docketed by him, will convey legal title to the State of California.

Equitable title, therefore, has already vested in the State of California. To obtain title to land under the provisions of the Act of February 28, 1891, various conditions precedent must be duly met, among them the statutory prescriptions as to the base lands and as to the character, quantity and location of the selected lands, and the Secretary's directions calling for certain fees, affidavits, certificates and proofs. It has long been settled that upon the complete performance in due form of all the acts which the statutes and the directions of the Secretary require the State to perform in order to perfect its selection, equitable title will pass to the State. State of Arizona, 59 I.D. 317 (1946).

However, until legal title vests in the State, the Department may act on claims initiated prior to the vesting of equitable title. Cameron v. United States, 252 U.S. 450, 461 (1920). Since Mr. Pierce's appeal from the rejection of his offer to lease was still pending at the time of the vesting of equitable title, his showing as to the prospective value of the land for oil and gas must be considered.

The well drilled by The Texas Company and mentioned in the appellant's statement of reasons is located approximately five miles east of the land in question, and on the other side of the San Andreas fault, which is of considerable magnitude. The conducting of geophysical exploration in the area cannot be considered as prima facie evidence of the prospective value of the lands for oil and gas. Frequently, magnetometer parties run lines to outcrops of granitic rocks in order to establish a base for calibrating instruments when working over sediments. The lands in question are in part underlain by metamorphic rocks as demonstrated by the map submitted with the appeal. The remainder of the lands are underlain by what would appear to be a thin section of alluvium with the metamorphic rocks dipping under the alluvium. The hypothetical diagram contained in the geologic report submitted with the appeal depicts very thin sediments over a massive grantic intrusion which does not support the 10,000 feet of sediments indicated in the geologic report.

The information submitted by the appellant does not warrant a change in the classification of the land as not prospectively valuable for oil and gas, and the decision of the Manager is affirmed.

Because of the report of the Geological Survey that the land has no value for oil or gas, the State will obtain the land without a reservation of the mineral content. The State will then be able to convey to Mr. Pierce such title to the land as will enable him to exploit its mineral resources to the fullest. This can be done, of course, only because it is the considered opinion of the Geological Survey that the land has no mineral resources which can be profitably developed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse party to be served with notice thereof is Kenneth C. Smith, Supervising Land Title Examiner, State Lands Commission, State Lands Division, 1403 Twelfth Street, Sacramento 14, California.

C. R. Drexilius
Acting Director

Attachment

DISTRIBUTION:

Mr. Harold L. Pierce (Certified Mail)
Mr. Kenneth C. Smith (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (9)
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0136932
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 28, 1958

DECISION

	:	
James H. McCue	:	Oil and Gas
	:	

Manager's Decision Affirmed

Mr. James H. McCue has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated October 17, 1956, which rejected his noncompetitive oil and gas lease offer, Los Angeles 0136932, because the land applied for was not available for leasing on the date the offer was filed.

The record shows the lease offer was filed on December 1, 1955, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), and that on that date the tract book records of the Land Office had not yet been noted as to the termination of the former oil and gas leases of the same lands, Los Angeles 076892 and 076892(A), both of which were cancelled December 1, 1955, for nonpayment of rental. Record notations relating to the cancellations of the leases were made on the tract book records of the Land Office on February 2, 1956.

In his appeal Mr. McCue acknowledges that the lands applied for by him were not available for leasing at the time he filed his lease offer because the terminations of the prior leases had not been recorded in the tract book records of the Land Office. He requests, however, that his lease offer be considered as filed on the date the lands first became available for leasing.

The pertinent Departmental regulation (43 CFR 192, 161a), in effect when the subject lease offer was filed, and when the prior leases were cancelled, provides in part as follows:

> "Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 192.120, on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of the lease. *** The termination of the lease for failure to pay the rental must be noted on the tractbook, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Until such notation is made, the lands included in such lease are not subject to, nor available for, leasing. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected." (Underscoring added)

Since the records of the Land Office were noted as to the cancellation of the leases on February 2, 1956, the lands involved became available for the filing of new lease offers immediately subsequent to such notations. In this connection it is noted there is an outstanding oil and gas lease offer of record in the Land Office for all sec. 13, T. 7 N., R. 18 W., S. B. M., involved in the appeal, which was filed by Glenn J. and Edith M. Homan, on February 5, 1957.

The regulation cited is specific in requiring rejection of lease offers which are filed prior to notations on the tract book records of the Land Office of the termination of the former lease of the same lands for nonpayment of rental. Such premature filing is cause for rejection of the application; it may not be suspended for consideration at such future time as the lands may become available for filing of new lease offers. The regulation respecting such notations and the subsequent further availability of the lands for filing of new lease offers accords equal opportunity to all persons who wish to apply for a lease of the lands when they are available. Cf. George B. Frieden, A-26402 (October 8, 1952).

The decision of the manager was correct, and it is hereby affirmed.

Mr. James H. McCue is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. James H. McCue then he must serve a copy of all documents on the adverse party, Glenn J. and Edith M. Homan, 1463 Melwood Drive, Glendale 7, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

C R Drexilius
C. R. Drexilius
Acting Director

Attachment

DISTRIBUTION:

Mr. James H. McCue (Certified Mail)
Glenn J. and Edith M. Homan (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

In reply refer to:

Los Angeles 0119108
5.04g

January 28, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Edward T. Hodge and
Kathleen J. Hodge : Oil and Gas

Manager's Decision Affirmed

Edward T. and Kathleen J. Hodge have appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated April 15, 1955, which rejected their above-noted oil and gas lease offer, filed pursuant to the provisions of section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The rejection was based upon a finding that the lands applied for were included in a withdrawal application, Los Angeles 0102641, of the Navy Department, and the Eleventh Naval District recommended that no oil or gas leases be granted in the area due to intensive daily use of the lands for air-to-air aircraft gunnery training and rocket firing practice.

Under date of October 21, 1957, the Commandant of the Eleventh Naval District has reiterated the objection of the Navy Department to granting of an oil and gas lease on the lands because such leasing would be incompatible with the present usage of the lands by the Navy in administering the Chocolate Mountain Aerial Gunnery Range, Imperial County, California, of which the lands are a part.

It has long been the policy of the Department to reject oil and gas lease offers where the lands applied for are being administered by another agency of the Government and that agency objects to the issuance of oil and gas leases on the ground that operations thereunder will interfere with the uses for which the lands are being used. John C. de Armas, Jr., A-27105, May 16, 1955; Jack Weldon Woods, A-27240, December 23, 1955.

Accordingly, the decision of the Manager is affirmed.

Edward T. Hodge and Kathleen J. Hodge are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Acting Director

Attachment

DISTRIBUTION:

Edward T. and Kathleen J. Hodge (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

29673

Appeal to Sec

In reply refer to:

Los Angeles 0137914
5.04g

affirmed A-27693 - 12-3-58

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 13, 1958
Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	) :)	Acquired Lands Oil and Gas

Manager's Decision Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated May 15, 1956, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0137914, filed under the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C., 1952 ed., secs. 351-359). The offer was rejected for the reason that the lands sought were included in leases issued pursuant to lease offers filed prior to that of Mr. Miller.

The appellant contends that his is the first properly filed offer for the lands sought. The basis for his contention is that he had previously filed oil and gas lease offer, Los Angeles 070898, for the same lands involved in this appeal, that final action had not been taken on his prior application, and that his present lease offer is entitled to priority as of the date of filing application 070898.

The records disclose that offer 070898 was filed on November 28, 1947. Notice of rejection of this offer was served upon Mr. Miller January 7, 1948. He appealed from that rejection 62 days later, on March 10, 1948. As a result of his failure to appeal within 30 days from receipt of the notice of rejection, his offer 070898 was closed.

To endow offer 0137914 with priority of filing based on 070898, as contended by the appellant, would in effect be a reinstatement of offer 070898. An applicant for a noncompetitive oil and gas lease whose application is rejected and who fails to appeal within the time allowed for appeal loses his preference right to a lease as against a subsequent qualified applicant and is not entitled to a reinstatment of his application with priority over the subsequent applicant. Charles D. Edmonson, et al., 61 I. D. 355.

Therefore, lease offer 0137914, for priority purposes, may be considered filed only at the time of its actual filing, January 20, 1956. At that time all the lands, involved in this appeal, were included in outstanding leases based upon applications which had been filed prior to January 20, 1956. The appellant's lease offer was properly rejected because the first qualified applicant for land available for oil and gas leasing has a statutory preference right to a lease, if a lease is to be issued for the land, which must be honored. C. T. Hegwer, 62 I. D. 77.

Accordingly, the Manager's decision is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1962. See Information Sheet attached.

If appeal is taken by Duncan Miller then he must serve a copy of all documents on the adverse parties named in Appendix "A", within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachments 2

DISTRIBUTION:
Mr. Duncan Miller (Certified Mail)
Minerals Staff Officer (5); Geol. Survey (3); Appeals List No. 1; BF.

APPENDIX "A"

Lease offer Los Angeles 0137914 is shown to be in conflict with oil and gas leases serial numbers as follows:

BLM-A 020989
BLM-A 021104
BLM-A 019831
BLM-A 018046
BLM-A 018524
BLM-A 018603
BLM-A 017933
BLM-A 017933-A
BLM-A 020277
BLM-A 020885
BLM-A 019832

Names and addresses of the lessees are as follows:

Tulley B. Martin - 750 Temple Ave., Long Beach 4, Calif.
Joseph A. Tarver - 1030 E. Fourth St., Long Beach, Calif.
John K. Malcomson- 308 Hazel Drive, Corona Del Mar, Calif.
Denzel L. Holmes - 14427 S. Horst Ave., Norwalk, Calif.
Orin O. Purvis - 630 A - Almond Ave., Long Beach 12, Calif.
Ruth A. Cree - 4256 Pacific Ave., Long Beach, Calif.
C. M. Crawford, Jr.- 404 N. Roxbury Dr., Beverly Hills, Calif.
Donna E. Kane - 1847 N. Whitley Ave., Hollywood 28, Calif.
Charles C. Reed - 530 Rowan Bldg., Fifth & Spring Street,
Los Angeles, California.

Clarence H. and
Clement J. Schnelker - 14017½ Van Nuys Blvd., Pacoima, Calif.

Milburn M. Oliver - 4306 East Anaheim, Long Beach, Calif.
Joseph A. Tarver - 734 Main Ave., Long Beach, Calif.
Hudson D. Wilcox - 3872 Marron Ave., Long Beach, Calif.

In reply refer to:

Sacramento 019740(c).
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 6, 1958

Certified Mail
Return Receipt Requested

DECISION

L. R. Wilhite	:	Oil and Gas
	:	
	:	

Manager's Decision Affirmed

L. R. Wilhite has appealed from a decision of the Manager, Land Office, Sacramento, California, dated May 12, 1955, which rejected his application for renewal of twenty-year noncompetitive oil and gas lease, Sacramento 019740(c), issued under the provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C., 1952 ed., sec. 181, et seq.). The reason for rejection was essentially that the application was not timely filed and an adequate showing to justify the delay was not made.

The lease was issued under Sacramento 019740 as of May 10, 1930, for a term of twenty years with the preferential right in the lessee to renew the lease for successive periods of ten years. Mr. Wilhite became the record titleholder by assignment approved effective August 1, 1951 (Sacramento 019740(c)). The term of the lease was extended three years and four months by reason of drilling and rental relief, or until September 8, 1953. By letter dated April 14, 1953, the Oil and Gas Supervisor of the Geological Survey, Los Angeles, California, notified the appellant that the lease would expire September 9, 1953, and suggested that he might wish to file an application for renewal or for an exchange lease. A second notice dated July 21, 1953, was sent to Mr. Wilhite by registered mail. Rental amounting to $13.34 was due under the lease to September 8, 1953, the expiration date of the term of the lease. In a letter to the Oil and Gas Supervisor of the Geological Survey on February 20, 1954, the appellant stated, "It is my understanding that if you do not pay the annual rental on any lease it would automatically run out. I don't want the lease * * * ." However, upon notification from the Geological Survey that the condition of the well on the leasehold would not warrant issuing and sustaining an order for plugging and abandonment of the wells, and apparently due to pressure by his bonding company, the appellant reconsidered and applied for a renewal lease on April 11, 1955. The date cited was the date noted by the Land Office as the final date on which such renewal application might be filed in accordance with Land Office decision of March 9, 1955. Production having ceased under the leasehold, the account had been returned to the Land Office by accounting advice on March 7, 1955.

The appellant designated F. H. Gillespie, Jr., as his operator on October 16, 1951, and he contends that he assumed the rentals and application for renewal would be made by the operator. He also states that "the only way that I might get the mess straightened out" (referring apparently to requirements of his bonding company for proper abandonment of the well) is to get a renewal of the lease and attempt to utilize costs of abandonment of the well through sale of the well casing.

The pertinent Departmental regulation provides in 43 CFR 192.61(a), in part, as follows:

> An application to renew should be filed in triplicate, in the proper office as prescribed in sec. 192.42(b), at least 90 days, but not more than six months, prior to the expiration of its term. Such application should be made by the record titleholder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

It is provided further in Departmental regulation 43 CFR 192.121(b), in pertinent part, as follows:

> No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: Provided, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

The Oil and Gas Supervisor has advised that Mr. Wilhite was notified that the rental should be paid. In response he stated clearly that he did not want a lease. The appellant did not make application for renewal, or pay the rental, or make a showing that operations had been carried on in accordance with the regulations during the prescribed period. 43 CFR 192.61(a). He did make a rental payment with his request for renewal of the lease which was received by the Geological Survey on March 28, 1955, but made no showing to justify the delay, the lessee stating only that he had assumed the operator would pay the rental and make application for renewal.

It has been held by the Department that the fact that an oil and gas lessee may have entrusted to another person the responsibility for protecting the lessee's preferential right to apply for a new lease on the same land, and that such person failed to discharge the obligation, must be regarded by the Department as irrelevant in passing upon the lessee's claim of a preferential right to a new lease. William J. Howe, A-26205 (August 28, 1951).

In a basically similar case to the one here considered, Melvin N. Armstrong, A-26474 (Supp.) (November 14, 1952), the Department held:

> "Where the holder of a 20-year oil and gas lease makes a convincing showing that his failure to comply with a regulation indicating that an application for the renewal of the lease 'should be filed * * * at least 90 days * * * prior to the expiration of its term' was due to difficult personal circumstances, his delay in filing the renewal application may be excused."

No such showing has been made in the instant case. In fact the appellant stated that he did not want a lease.

In view of the foregoing, the decision of the Manager, which denied the application for renewal lease, is affirmed.

L. R. Wilhite is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

(See page 4 for distribution)

DISTRIBUTION:

Mr. L. R. Wilhite (Certified Mail)

Minerals Staff Officer (5)

Geological Survey (3)

Appeals List No. 1

EG

appeal to Sec
dismissed A-27810 10-29-58

In reply refer to:

Sacramento 052758
052779
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 25, 1958

Certified Mail
Return Receipt Requested

DECISION

Henry Casperson and
James P. Witmer

Oil and Gas

Manager's Decision Affirmed

Henry Casperson and James P. Witmer have appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Sacramento, California, dated September 13, 1956, rejecting their noncompetitive oil and gas lease offers filed pursuant to section 17 of the Mineral Leasing Act, as amended, (30 U.S.C., 1952 ed., sec. 226). Each offer was rejected for the reason that it "was received in the land office at 10:43 a.m. on September 4, 1956, too late to be considered in a drawing. Other offers for the same land were received simultaneously at 10:00 a.m. on September 4."

The appellants allege that it is the Land Office practice to accept the first regular mail delivery of each day as having been delivered or filed at 10:00 a.m. They contend that their offers were received by the Land Office in the first regular mail of September 4, 1956 (the first business day after the Labor Day holiday) and that they should be considered as having been filed at 10:00 a.m. when the office was opened to the public; that the offers should be considered as having been filed simultaneously with offers made over the counter on that date or received in the Saturday mail. They further contend that "The Manager's Decision of September 13, 1956, is also in error for rejecting our offer rather then suspending it (if he felt it was not simultaneous)as the land embraced in our offer was not under an issued lease on the date of his Decision, thus we were denied the opportunity of a Protest against any drawing for the land that did not include our offer."

Land Offices are authorized to accept documents for filing when they are actually delivered to and filed in the proper office. When documents are received after the close of the business day they are accepted for filing and time-stamped as of the opening of the office to the public on the next business day. Therefore, all documents received for filing between the close of business on one day and the opening of the next business day, are time-stamped as filed at the opening of the first business day after the document is received. Documents received after 10:00 a.m. during the business day are time-stamped and filed when actually received.

An oil and gas lease offer may be filed by the offeror in person, or he may use the United States mails as his agent for delivering a letter to the local land office. When filed by mail, "an offer will be considered filed when it is received in the proper office during business hours." 43 CFR 192.42(b). In consonance with such regulation, number 4 of the General Instructions on the reverse side of the lease offer states in pertinent part, that "The term 'filing' means the actual receipt of the offer in the proper land office." Under the regulation quoted in part above and the instruction referred to, a "filing" is not complete until the document is delivered to the proper official and by him received and filed. Even if the letter, in the usual course of the mails, should have reached the Land Office by 10:00 a.m., the fact nevertheless remains that the offer was not filed at that time, "for a paper is considered filed only at a time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was negligent." H.P. Saunders, Jr., 59 I.D. 41, 43 (1945); John J. Farrelly, et al., 62 I.D. 1 (1955). Obviously the appellants' lease offers may not be considered filed at any time earlier than their actual receipt in the Land Office, viz., 10:43 a.m.

The Manager erred in rejecting the subject applications; his action in so doing was premature. It is the established practice to hold junior applications in suspense pending final adjudication of the senior-filed applications. Upon favorable consideration of the earlier filed application(s) the junior application(s) must be rejected. Conversely, if action on the senior application(s) is unfavorable, the junior application(s) is entitled to consideration. John E. Miles, 62 I.D. 135 (1955). Rejection of junior offers prior to final action on the earlier-filed applications would serve to foreclose the junior offerors of their right to have their offers considered in the event of rejection of the senior applications. However, the record shows that the lands, subject of this appeal, have been properly leased to the earlier filing applicants. C. T. Hegwer, et al., 62 I.D. 77 (1955).

Accordingly, the Manager's decision are affirmed.

Messrs. Casperson and Witmer are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee in the case of each lease offer in which favorable action is sought. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Messrs. Casperson and Witmer then they must serve a copy of all documents on the adverse party Victor P. Paganucci, 3600 Dcwry Way, Sacramento, California within 15 days after filing the document and must send proof of that service, as required by 43 CFR 221.34 and 221.95 directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Messrs. Henry Casperson and James P. Witmer (Certified Mail)
Victor P. Paganucci (Regular Mail)
Minerals Staff Office (5)
Geological Survey (3)
Appeals List No. 1
BF

In reply refer to:

Los Angeles 0122506
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 26, 1958

Certified Mail
Return Receipt Requested

DECISION

James H. McCue : Oil and Gas

Manager's Decision Affirmed, as Modified

James H. McCue has appealed to the Director, Bureau of Land Management, from the decision of the Manager, Land Office, Los Angeles, California, dated May 16, 1955, which rejected his oil and gas lease offer filed December 20, 1954, under section 17 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected because it was found to conflict with leases issued pursuant to prior offers for the same lands.

The record shows the appellant first applied under Los Angeles 0122506 on December 1, 1954, to lease all secs. 3 and 10 and lots 1 and 2 sec. 4, T. 7 N., R. 18 W., S.B.M., California. This offer was rejected and returned to the offeror for submission of a new offer in compliance with Item 9(a) of the General Instructions and Item 2 of the Special Instructions on the reverse side of the lease form (Form 4-1158, 4th Edition, Sept. 1953), the land description supplied by the offeror being insufficient to identify the lands sought (the offer including unsurveyed lands for which metes and bounds descriptions were not supplied) and the offer therefore not entitling the offeror to any priority of filing. 43 CFR 192.42(d) and (g). No timely appeal was taken by the offeror from this notice of rejection of the application. However, on December 20, 1954, he filed a new lease offer under the same serial number, whereupon the Manager's decision of May 16, 1955, was rendered, rejecting the offer for conflict with leases issued pursuant to prior offers for the same lands.

The record discloses that of the lands applied for on December 20, 1954, the SW¼ sec. 3, above township and range, was then included in noncompetitive oil and gas lease Los Angeles 076767-A, which had been issued November 1, 1949, and extended for a period of five years from November 1, 1954, and that the lots 1 and 2 of secs. 3 and 4 and all sec. 10, above township and range, were then included in noncompetitive oil and gas lease Los Angeles 0122547, which had been issued as of June 1, 1955, for a five-year term.

The Manager's decision was erroneous in holding that all of the lands applied for under offer Los Angeles 0122506 were covered by leases on December 20, 1954; it appears that land which when surveyed will probably be the E½ sec. 3, T. 7 N., R. 18 W., S.B.M., included in the offer filed December 20, 1954, was not affected by any prior lease.

The arguments presented in the appeal of the lease offeror relate to the validity or invalidity of the lease offer as filed December 1, 1954. However, since no timely appeal was taken from the rejection of this offer, the Manager's rejection thereof has become final. It is noted that of the lands applied for in the lease offer filed December 1, 1954, namely, lots 1 and 2 sec. 3 and lots 1 and 2 sec. 4, the offer should not have been rejected since these lands were then available for leasing. Although these lands comprise only 56 acres, a lease could have been issued for them because an oil and gas lease offer, if otherwise valid, may be accepted for an area of less than 640 acres so long as it embraced at least 640 acres of lands available for leasing at the time of filing of the offer. E. J. Bernardini, et al., 62 I.D. 235 (1955). The appellant's lease offer filed December 1, 1954, and the offer pursuant to which lease Los Angeles 0122547 was issued, having been filed simultaneously as to the subject lands, properly described in the December 1, 1954, lease offer of James H. McCue, a drawing should have been had to determine priority of filing between these offers. However, as noted above, no appeal was taken by the lease offeror with respect to the rejection of the offer filed December 1, 1954, and the Manager's decision relating thereto became final.

It is noted further that at the time the lease offer of December 20, 1954, was filed, the pertinent Departmental regulation (43 CFR 192.42(g)(1); Circular 1875, effective July 9, 1954) provided in part as follows:

> "***an offer will be rejected and returned to the offeror and will afford the applicant no priority if:
> (iii) The full filing fee *** do not accompany the offer***."

Inasmuch as a filing fee was not furnished with the December 20, 1954, lease offer, the offer was subject to rejection for this reason. The December 20, 1954, lease offer must be considered a new lease offer in view of the fact that the Manager's rejection of the December 1, 1954, offer was not appealed and became final.

The rejection of the lease offer submitted December 20, 1954, is affirmed, but on the basis here shown rather than for the reasons assigned by the Manager's decision of May 16, 1955, from which the subject appeal was taken.

James H. McCue is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D, C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by James H. McCue then he must serve a copy of all documents on the adverse parties, Continental Oil Company, 1137 Wilshire Boulevard, Los Angeles 17, California (Lessee under Los Angeles 076767-A), and Joseph A. Sawyer, Room 610, 650 So. Grand Avenue, Los Angeles 17, California (Lessee under Los Angeles 0122547), within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:
Mr. James H. McCue (Certified Mail)
Mr. Joseph A. Sawyer (Regular Mail)
Continental Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

appeal to Sec
affirmed A-27705 11/12/58

In reply refer to:

Los Angeles 0140706
0140707
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Raymond J. Hansen :
:
: Oil and Gas
Harold J. Hansen :
:

Manager's Decisions Affirmed

Raymond J. Hansen (Los Angeles 0140706) and Harold J. Hansen (Los Angeles 0140707) have appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Los Angeles, California, dated August 24 and August 15, 1956, respectively, which rejected their noncompetitive oil and gas lease offers, both filed May 1, 1956, under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The Manager stated that the lands applied for were embraced in oil and gas lease Los Angeles 089154, which was issued for a primary term of five years from May 1, 1951, and which was extended for five years from May 1, 1956.

The records disclose that the lessee of oil and gas lease Los Angeles 089154 is the B & M Oil Company. On January 27, 1956, ninety-five days, in fact, before the primary term of the lease was to expire, the lessee filed application for extension of the lease. The subject oil and gas lease offers which included the land embraced in oil and gas lease Los Angeles 089154 were filed on May 1, 1956. The Manager issued the extended lease on July 25, 1956, effective as of May 1, 1956.

The appellants contend that the extension of oil and gas lease Los Angeles 089154 was granted without authority of law because the request therefor was filed January 27, 1956, 94 days prior to the expiration date of the primary term of the lease, at midnight, April 30, 1956. They contend that a premature filing is untimely in the same way as a filing which is submitted late.

The issue involved here is like that considered by the Department in Solicitor's Opinion, M-36045, of July 26, 1950, with respect to preference right oil and gas leases under section 1 of the Act of July 29, 1942 (56 Stat. 726), as amended, that law also providing a specified period for the filing of applications for such leases. In that opinion the Solicitor held that an application filed prior to the beginning of the specified period, and retained on file through the specified period, may be accepted as being in fulfillment of the statutory requirement. It was stated in that opinion that while a premature application may be subject to rejection if such action is taken prior to the period allowed for such filing, where the Department fails to reject the premature application prior to the beginning of the period specified for such filing and the application remains on file into the specified period, it thereupon becomes effective as an application on file within the specified period mentioned by the statute and is therefore acceptable.

In the instant case, although the application for lease extension was submitted prior to the period specified for such applications in the statute, it was not rejected as premature and in fact the Manager issued the extended lease pursuant to such application after the expiration of the period allowed for such filing, i.e., the statutory period allowed for such filing expired on April 30, 1956, and the extended lease was issued July 25, 1956, effective as of May 1, 1956.

The action of the Manager was in accord with the Solicitor's opinion above referred to and was correct. The rejection of the subsequent lease offers for the same lands was proper. In view thereof, the Manager's decisions are affirmed.

Raymond J. Hansen and Harold J. Hansen are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellants of this decision, and must be accompanied by a $5.00 filing fee for each lease offer in which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If an appeal is taken by Raymond J. Hansen and Harold J. Hansen, then they must serve a copy of all documents on the adverse party, B & M Oil Company, Post Office Box 789, Maricopa, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Raymond J. Hansen (Certified Mail)
Mr. Harold J. Hansen (Certified Mail)
B & M Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

Affirmed A-27713 8-6-58
appeal to Sec

In reply refer to:

Los Angeles 0141357
0141359
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Mr. Duncan Miller has appealed to the Director, Bureau of Land Management, from separate decisions of the Manager, Land Office, Los Angeles, California, dated February 27 and February 28, 1957, rejecting his noncompetitive oil and gas lease offers, Los Angeles 0141359 and 0141357, respectively, which had been filed pursuant to the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Each offer was rejected in its entirety because of conflict with a prior oil and gas lease offer, pursuant to which lease was issued.

The appellant states that the parties who filed prior to him were the same parties who had previously held leases for the same lands and who filed relinquishments of their leases solely for the purpose of refiling for the same lands. He contends that such lease offers are invalid.

The record discloses that the prior lease offers in issue are lease offers Los Angeles 0138455 and 0139255, filed, respectively, by Natalie Z. Shell and James P. Witmer on February 13, and March 7, 1956. Leases were issued effective June 1 and September 1, 1956, pursuant to these respective offers. Mr. Miller filed his lease offers on May 21, 1956. All the lands described in the Miller offers are now embraced in the issued leases; all the lands were previously embraced in prior leases which were relinquished and filed for by the present holders of the existing leases after appropriate notations of relinquishments of the prior leases were made on the tract books of the Land Office.

The Mineral Leasing Act, supra, sets forth the several methods by which an oil and gas lease may be terminated. The regulations, 43 CFR, Parts 191 and 192, implementing the statutes, include provisions for the orderly leasing of lands as well as provisions concerning the termination of such leases. Regulation 192.43 (Circular 1904, March 24, 1955, 20 F.R. 1778), in effect at the time the prior leases were relinquished and when the subsequent lease offers were filed, provided, in this connection, that immediately upon notation of a relinquishment in the appropriate tract book record of the land office, the relinquished lands become available for further leasing, unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. See M. A. Machris, et al., 63 I.D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Cf. Frederick D. Anderson, A-26911 (July 28, 1954).

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955). Leases having been issued to the senior applicants, who were determined to be entitled to the issuance of leases pursuant to their prior filed offers, the Miller offers were properly rejected for these lands.

Accordingly, the Manager's decisions are affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each lease offer with respect to which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If an appeal is taken by Mr. Duncan Miller, then he must serve a copy of all documents on the adverse parties, Mr. H. W. Dougherty, 412 Statler Center Office Building, Los Angeles 17, California (Los Angeles 0138455), and Superior Oil Company, 930 Edison Building, Los Angeles 17, California (Los Angeles 0139255), within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. H. W. Dougherty (Regular Mail)
Superior Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

appeal to Sec
Affirmed A-27737
11/20/58

In reply refer to:
Los Angeles 0137916
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 31, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	:	Oil and Gas
	:	
	:	

Manager's Decision Affirmed

Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated February 14, 1956, rejecting his noncompetitive oil and gas lease offer filed pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359). The offer was rejected for the reason that the land applied for was acquired in fee for military purposes and is a portion of the Bolsa Chica Military Reservation, and as such is excepted from the provisions of section 3 of the above cited act (30 U.S.C. sec. 352). The Manager stated also that the Director, Geological Survey, had reported the lands to be situated within the known geologic structure, undefined, of the Huntington Beach Field.

The appellant contends that the lands applied for are subject to the leasing provisions of the act cited, and he alleges that the report of the lands being within a known geologic structure may be in error.

The appellant's application, for approximately 20 acres of land described as the $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ sec. 29, T. 5 S., R. 11 W., S.B.M., California, was filed on January 20, 1956. As noted in the Manager's decision, these lands are the identical lands which were embraced in lease offer BLM-A 039208 filed December 23, 1954. The latter lease offer was rejected for the same reason as the subject application. The Departmental decision affirming the rejection of that offer, Donald M. Snow, A-27464 (July 29, 1957), held that since, when the lease offer was filed, the lands were set apart for military purposes, they were expressly excluded from the leasing provisions of the Mineral Leasing Act for Acquired Lands, and the Department is not authorized to issue oil and gas leases on such lands (30 U.S.C., 1952 ed., sec. 352; 43 CFR 200.2). The Department further stated, even though the land may not be used for such purposes presently, and though the record may show that it may be declared surplus, these circumstances do not change the fact that it was not available for leasing under the act cited when the appellant's application was filed.

The rejection of the application was correct, and the Manager's decision is hereby affirmed.

If the tract involved is declared surplus, it may become available for leasing in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C., 1952 ed., secs. 471 et seq., see secs. 473, 484(a), 484(c); William O. Segerstrom A-27076 (March 31, 1955).

Mr. Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

appeal to Sec

In reply refer to:
Reversed & Remanded A-27724
Los Angeles 0138800 11/17/58
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 31, 1958

Certified Mail
Return Receipt Requested

DECISION

Tom H. Dowlen : Oil and Gas
: (Acquired Lands)
:

Manager's Decision Modified; Rejection of Lease Offers Affirmed

Tom H. Dowlen has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated March 13, 1956, rejecting his noncompetitive oil and gas lease offer, filed pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359), for certain acquired lands of the United States comprising the Veterans Administration Center, Los Angeles, California, and two adjacent parcels lying easterly thereto, formerly Veterans Administration lands. The Manager stated that the offer was rejected on the same basis as were rejected prior oil and gas lease offers for the same lands, BLM-A 036114 and Los Angeles 0126906, of the St. Anthony Oil Corporation and Raymond C. Turnbull, respectively, by his decision of July 18, 1955, namely, (1) to the extent the lease offer involves lands comprising the present Veterans Administration Center, that the lands cannot be leased under the Act cited because the Administrator of Veterans Affairs, the head of the agency having jurisdiction over the lands, had determined that drilling or exploration for oil and gas deposits on the site would be incompatible with the utilization of the property for hospital purposes, and (2) to the extent the lease offer includes the two parcels adjacent to the Veterans Administration Center, one of which contains approximately .344 acres and the other approximately 34.808 acres, that the lands are situated within the City of Los Angeles and are excepted from leasing under the Act cited by section 3 thereof.

The appellant does not note error on the part of the Manager in rejecting his lease offer. His appeal constitutes a request for reconsideration of the lease offer, based on certain amendments thereto, specified in his appeal, including an offer of increased royalty to the United States and special drilling restrictions to minimize use of the surface of the lands involved.

By Bureau decision of February 12, 1957 (in the attached) in the cases of the prior offers to lease the subject lands, St. Anthony Oil Corporation et al., BLM-A 036114, Los Angeles 0126906, referred to in the Manager's decision, it was held that the lands involved being situated within an incorporated city were not leasable under the terms of the Mineral Leasing Act for Acquired Lands, and further, with respect to the .344 acre parcel of land adjacent to the Veterans Administration Center, that under the present status of the land the United States does not have any leasable interest in the oil and gas deposits therein. It was also stated in the Bureau decision referred to, as follows:

> "The only authority which this Department has over the oil and gas deposits in the lands comprising the Veterans Administration Center is the implied authority which is vested in the Executive Branch of the Government to take protective measures in cases where lands owned by the United States and not subject to the mineral leasing laws are found to contain oil and gas deposits which are being drained by adjoining owners. 40 Op. Atty. Gen. 41. In the exercise of this authority, it is in the public interest to offer lands believed to be within the known geologic structure of a producing field for leasing on a competitive basis. A. P. Scott, A-25846, July 25, 1950."

In view of the foregoing, the subject lease offer may not be reconsidered as suggested by the appellant. The rejection of the lease offer is affirmed, and the Manager's decision is hereby modified similarly as was his decision on the prior oil and gas lease offers, by the Bureau decision of February 12, 1957, above referred to.

Mr. Dowlen is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachments

Distribution on page 3

DISTRIBUTION:

Mr. Tom H. Dowlen (Certified Mail)
Geological Survey (3)
Minerals Staff Officer (5)
Appeals List No. 1
BF

appeal to Sec
Affirmed A-27716 11/6/58

In reply refer to:

Sacramento 040362
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Mary C. Hagood :
Standard Oil Company of : Oil and gas.
California :

Action of Land Office Affirmed
Lease Terminated

Standard Oil Company of California, pursuant to an operating agreement entered into with Mrs. Mary C. Hagood, record titleholder of noncompetitive oil and gas lease Sacramento 040362, paid the annual rentals due for several of the lease years. Mrs. Hagood tendered payment of rentals for some of the same lease years and protested the action of the Manager, Land Office, Sacramento, California, whereby he accepted payment of rentals from the Standard Oil Company of California. The protest was considered as an appeal from the Manager's actions, and the case record was transmitted to this office for consideration and decision.

Mrs. Hagood's appeal is predicated on her contention that the Standard Oil Company of California had breached the terms of its operating agreement with her and that the acceptance of rentals from the operator by the Bureau had effectively served to "extend" the terms of the operating agreement between the parties although she, as record titleholder of the lease, was the sole person to determine whether the lease should be maintained and rentals paid.

The facts and questions here presented are identical to those previously discussed by the Department in its reported decision of November 15, 1955, in the case of L. N. Hagood, Standard Oil Company of California, 62 I. D. 415. In that case the Department held that where the rental due on a noncompetitive oil and gas lease has been paid by the operator under an operating agreement approved by the Department, and no evidence has been submitted that the operating agreement has been terminated in accordance with its terms respecting termination, it is proper to refuse to accept a payment from the lessee for the same rental. It was also held that where the lessee and the operator are in dispute as to whether their operating agreement has been terminated because of the failure of the operator to comply with its terms, the courts rather than the Department are the proper tribunal to determine the controversy.

Since there were no reasonable grounds for refusing the tender of rental payments by the Standard Oil Company of California, the acceptance of those rentals by the Manager was correct. Additional rentals submitted for the same lease years are subject to refund.

The ninth year's annual rental for lease Sacramento 040362, $230, was due on or before the anniversary date of the lease, November 1, 1957. Unless the full rental due were paid timely, the lease, subject to the provisions of the act of July 29, 1954 (30 U.S.C., 1952 ed., Supp. IV; 43 CFR 192.161), would automatically terminate under the provisions of that act. 1/ The record fails to show that the lessee filed a relinquishment of any land embraced in her lease; it shows that Standard Oil Company of California has paid $150 to cover the ninth year's rental for those lands retained in its operating agreement. Since the full annual rental was not paid when due, the entire lease terminated under the provisions of the act cited. The partial rental which was tendered is refundable. It is to be noted that although lease Sacramento 040362 has been terminated, the lands formerly embraced therein are not available for further leasing until notation of the termination has been made in the appropriate tract book (43 CFR 192.161).

Mrs. Hagood is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice,

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1/ The Mineral Leasing Act, the lease terms and departmental regulations all contemplate and require annual rental for an oil and gas lease, although expressed in terms of a rate per acre, is due and payable one year in advance for the entire leased area on or before the anniversary date of the lease.

There is nothing in the act of July 29, 1954, supra, which would warrant any change. That act provides, inter alia, that "upon the failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease***, the lease shall automatically terminate****."

43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

When this decision becomes final the case records will be returned to the Manager, through the Bureau's State Supervisor at Sacramento, California, for further appropriate action including the refund of unearned rentals.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mrs. Mary C. Hagood (Certified Mail)
Standard Oil Company of California (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

33950

appeal to Sec
affirmed A-27718 11/7/58

In reply refer to:

Los Angeles 0144777
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 7, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Mr. Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision dated May 9, 1957, by the Manager, Land Office, Los Angeles, California, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0144777, filed at 10:29 A.M., October 10, 1956, under the provisions of section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The reason given for the rejection was that this lease offer conflicted with prior offer Los Angeles 0145772 for the same lands, which offer was filed at 10:00 A.M., October 10, 1956, and pursuant to which a lease was issued effective May 1, 1957.

In his appeal Mr. Miller contends in substance that the prior conflicting lease offer was an invalid offer, being for less than 640 acres of nonisolated lands.

The record shows all the lands surrounding the leased lands have been patented, without reservation of the oil and gas deposits therein to the United States.

Accordingly, the lands in question constituted an isolated tract within the contemplation of the regulation (43 CFR 192.42(d)(2)), at the time the prior offer Los Angeles 0145772 was filed. The offer was, therefore, a proper offer, within the exception stated in the cited regulation. Where lands are available for noncompetitive lease offers, the Department is under a mandatory duty, imposed by section 17 of the Mineral Leasing Act, as amended, to lease them to the qualified person who first submits a proper application. C. T. Hegwer et al., 62 I. D. 80 (1955).

The action of the Manager in rejecting the subject lease offer is affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. An appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Miller then he must serve a copy of all documents on the adverse party, Mr. C. D. Jones, 900 Wilshire Boulevard, Los Angeles, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. C. D. Jones (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

In reply refer to:

Los Angeles 0103371-A
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1958

Certified Mail
Return Receipt Requested

DECISION

F. G. Walker : Oil and Gas
:
:

Appeal Dismissed

F. G. Walker has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated February 27, 1957. That decision, in effect, held (1) that noncompetitive oil and gas lease Los Angeles 0103371-A, issued pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), had terminated under the provisions of the amendatory act of July 29, 1954 (30 U.S.C., 1952 ed., sec. 188), by operation of law, because of failure to pay the annual rental due for the fourth lease year commencing December 1, 1956, and (2) since the lease had terminated, three partial assignments thereof affecting record title were not subject to approval, there being no lease in existence capable of assignment.

Noncompetitive oil and gas lease Los Angeles 0103371-A was created by partial assignment of lease 0103371, to F. W. Walker, as to 800 acres, approval of the assignment being effective January 1, 1955. Lease 0103371-A was subjected to the act of July 29, 1954 (30 U.S.C., 1952 ed., sec. 188) upon the written consent of the record titleholder, Mr. Walker. Subsequent to the filing of such written consent three partial assignments were filed, with supporting evidence as required by the regulations, when the lease was in good standing and before the fourth year's annual rental was due. The assignments aggregating 200 acres, appear to be proper and had they been approved when filed they would have been effective as of the first day of the lease month following the dates of filing, September 1, 1956, as to two of them, and November 1, 1956, as to the other. Together with their requests for approval of the assignments, the assignees tendered rental on a prorata basis for the lands embraced in the three partial assignments. The appellant, record titleholder of the subject lease, failed to pay any rental due under the lease.

The appellant alleges that the delay in approval of the assignments was the fault of the Manager, He contends that had the assignments been adjudicated timely, when submitted for approval, that the proposed assigned portions of the lease would have been continued in good standing, as segregated portions of the parent lease. He further states that it was his understanding that the amendatory leasing act of July 29, 1954, allowed him to pay rental on only so much of the acreage in the parent lease as he desired to retain in that lease.

The act of July 29, 1954, *supra*, provides, *inter alia*, for the automatic termination of an oil and gas lease for failure of the lessee to pay the annual rental due on or before the anniversary date of the lease. It is clear that unless the annual rental due on the appellant's lease was paid on or prior to December 1, 1956, that the lease terminated automatically on that date by operation of law. Since the appellant (lessee) did not pay the advance rent due under the leasehold on that date, the lease automatically terminated in its entirety leaving no lease in existence capable of assignment.

The Manager's decision was correct, and it is hereby affirmed.

Mr. Walker is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:

F. G. Walker (Certified Mail)
Paul A. Maurice (Regular Mail)
Dr. Edwin D. Warren (Regular Mail)
Bruno Guardia and Mrs. Mildred Guardia (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

appeal to Sec
affirmed A-27728 - 11/12/58

In reply refer to:

Los Angeles 0141358
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 15, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision of Manager Affirmed

Duncan Miller has appealed to the Director of the Bureau of Land Management from a decision of October 18, 1956, by the Manager of the Land Office at Los Angeles, California, rejecting in its entirety his oil and gas lease offer (Los Angeles 0141358), under the provisions of Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Appellant's offer was rejected because the lands applied for were embraced in oil and gas lease Los Angeles 0136293.

The record discloses that noncompetitive oil and gas lease, Los Angeles 0136293, was issued as of April 1, 1956, for a period of 5 years and so long thereafter as oil or gas is produced in paying quantities, pursuant to application filed October 31, 1955. A previous lease of the same lands, Los Angeles 079556, was canceled upon relinquishment, effective October 28, 1955, and the land office tract books were so noted on the same day, October 28, 1955. 1/

Appellant filed his oil and gas lease offer, Los Angeles 0141358, for the same lands on May 21, 1956. Notwithstanding the relinquishment of the previous lease (Los Angeles 079556) on October 28, 1955, and the notation of the land office tract books on the same day, the appellant contends that lease offer Los Angeles 0136293 was prematurely filed on

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1/ Tract book also contains a notation "Lease terminated by operation of law 10-31-55." However, this notation is erroneous.

October 31, 1955, that the lands were not open and available for leasing until November 1, 1955, after the previous lease terminated by operation of law, and that any lease issued under lease offer Los Angeles 0136293 was invalid.

At the time oil and gas lease Los Angeles 079556 was relinquished on October 28, 1955, and when the appellant filed his lease offer, Los Angeles 0141358, the pertinent Departmental regulation (43 CFR 192.43(a)) provided in material part:

> "Where the lands embraced in a relinquished or cancelled noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the cancellation or relinquishment on the tract book * * * of the appropriate land office." 2/

The Department has held, in the case of M. A. Machris, Melvin A. Brown, 63 I.D. 161 (June 11, 1956), that the plain and unambiguous language of the regulation provided that land in a relinquished lease became available for the filing of lease offers when, and only when, the relinquishment was noted on the tract book.

In view thereof the Manager's decision of October 18, 1956, is affirmed.

The lands being subject to leasing, the first person to apply for the lease after the relinquishment of the prior lease was noted on the tract book, if otherwise qualified to hold a lease, had a statutory preference right. C. T. Hegwer et al., 62 I.D. 77 (1955).

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director.

2/ This regulation has since been amended on August 23, 1957 (22 F.R. 7078) without change material here.

Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Miller, then he must serve a copy of all documents on the adverse party, Mr. Roland A. Stedt, 512 South New Hampshire, Los Angeles 5, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Roland A. Stedt (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

In reply refer to:

Los Angeles 0136542
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 15, 1958

Certified Mail
Return Receipt Requested

DECISION

Frances E. Cain : Oil and Gas
:
:

Manager's Decision Affirmed
Lease Offers Rejected

Frances E. Cain has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated January 23, 1956, rejecting her noncompetitive oil and gas lease offer, Los Angeles 0136542, filed under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226).

Miss Cain's offer was filed November 9, 1955, for:

T. 7 N., R. 22 W., San Bernadino Meridian, California
Sec. 4, S½SE¼.

The offer was rejected because it did not comply with the regulation (43 CFR 192.42(d)) which states in pertinent part that an offer "may not be for less than 640 acres except * * * (2) Where the land is surrounded by lands not available for leasing under the act." The decision also provided that a new offer may be filed within 30 days from service of the rejection, in which event the fee and rental payments on the old offer may be applied to the new offer (43 CFR 192.42(g)(1)(ii) and (vii).

In her appeal Miss Cain states that she believes a mistake was made and that the land in her original offer was in fact surrounded by lands not available for leasing. She also states that she remembers a notation "extension applied for" in the tract book in reference to a prior lease, Los Angeles 087774, on N½ sec. 9, T. 7 N., R. 22 W., which would have segregated the land and made it unavailable as of the date of Miss Cain's filing.

The records of the land office show, however, that although Los Angeles 087774 was extended in part, this extension did not include the N½ of section 9, and there is no notation in the tract book that extension was ever applied for on this land. The land was available for further leasing after the prior lease terminated by operation of law on January 31, 1955 (43 CFR 192.120(g)). Since the land in Miss Cain's application comprised less than 640 acres and the tract was not entirely surrounded by lands not subject to leasing, the application was properly rejected.

We come now to the developments subsequent to the rejection of Miss Cain's original offer on January 23.

On February 8, Miss Cain filed a new lease offer which embraced:

T. 6 N., R. 21 W., San Bernadino Meridian, California
    Sec. 1, Lot 4, SW¼NW¼;
    Sec. 3, NW¼SE¼;
T. 7 N., R. 21 W.,
    Sec. 36, NE¼NW¼.

On February 9, Miss Cain filed a relinquishment of the described lands in section 1, T. 6 N., R. 21 W. At the same time she submitted another substitute lease offer combining the lands in her original offer and those remaining, after the relinquishment, in her offer of the previous day. On the same date the appellant filed her appeal from the decision of January 23, 1956.

Both the offer received February 8 and that received February 9 are defective, however, in the same manner as the offer of November 9. Each of the February offers described 160 acres when submitted. The lands in section 3 and section 36, above, were described in both February offers. The status report shows that lands surrounding these tracts were embraced only in previously filed oil and gas lease offers. The Department has held that the fact that public land is covered by an outstanding application for an oil and gas lease does not render it not available for leasing within the meaning of the regulation requiring that with certain exceptions, an application for an oil and gas lease include not less than 640 acres. Natalie Z. Shell, 62 I.D. 417 (1955). Where a regulation of the Department provides that no oil and gas lease offer for less than 640 acres will be considered, except in certain specific instances, an oil and gas offer to lease less than 640 acres which does not come within the exceptions stated will be rejected. Blanche W. Sweeney, A-27339, July 16, 1956. Since each of the February offers described less than 640 acres and since each was not entirely surrounded by lands not available for leasing and did not come within the other exceptions in the regulations (43 CFR 192.42(d) (2)), both of these offers should be rejected.

It should also be noted that when filing her offer on February 8, Miss Cain described 160 acres of land not including the tract in her offer of November 9. Pursuant to 43 CFR 192.42 (g) (vii) the rentals and filing fee paid with the original offer were applied to the February 8 offer, the total rentals paid under both offers amounting to $80, plus $10 filing fee. Since all rentals paid in support of the original lease offer had been applied to the February 8 offer on the day it was filed, all rights under the original offer terminated, and the subsequent appeal filed February 9 was therefore moot. It is clear that the provisions of the regulations allowing an offeror to appeal an adverse decision rejecting her offer, and the provisions of the regulations allowing an offeror to file a new offer within 30 days and apply the rentals and filing fee paid in connection with the rejected offer to the new offer, are mutually exclusive. When the offeror elected to file a new offer under these provisions acceptance of the Manager's decision rejecting the first offer was implicit, and all her rights in connection therewith terminated as of the moment the new offer was filed.

While it is true that when filing her appeal Miss Cain also relinquished part of the lands in her offer of February 8, such an action could not restore her rights in the original offer which had previously been severed.

One further point should be considered in connection with the February 9 offer. By letter of February 14, 1956, the Manager returned this offer to the offeror on the ground that there is no provision in the regulations for amendment of a lease offer except for one of the reasons shown under number 9 of the General Instructions on the reverse side of the lease forms. It is not necessary to make a finding as to the correctness of this action since Miss Cain apparently acquiesced in the offer being returned to her, and the question therefore need not be considered.

Based on the above findings the decision of the Manager rejecting the offer of November 9 is found to be correct, and it is hereby affirmed. In addition, the February 8 offer is hereby rejected for the reasons stated. The February 9 offer, which might properly have been rejected for the same reasons, was returned to the offeror, from which action she did not appeal and consequently this offer is no longer in good standing before this office.

Miss Cain is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the

Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Miss Frances E. Cain, (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
VJR

In reply refer to:

Los Angeles 0137123
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Hampton C. Robinson, Jr. : Oil and Gas

Manager's Decision Reversed
Case Remanded for Further Processing

Hampton C. Robinson, Jr., has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated September 25, 1956, rejecting in part his noncompetitive oil and gas lease offer, filed pursuant to section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The application was rejected as to the SE$\frac{1}{4}$ sec. 3, SE$\frac{1}{4}$, SW$\frac{1}{4}$ sec. 10, T. 14 S., R. 10 E., S.B.M., California, for the reason that these lands, embraced within prior allowed desert land entries, were reported as having no prospective value for oil and gas by the Geological Survey.

The appellant, by his attorney, stated "Said appeal is filed for the reason that the above-described lands have a prospective value for oil and gas. Geologic reports will be submitted to substantiate the fact that the above-described lands do have a prospective value for oil or gas. It is requested that the case be assigned to a Field Commissioner of the Bureau of Land Management for a hearing, on the issue as to the prospective value of the above-described lands for oil or gas."

The regulation, 43 CFR 192.71(b) provides, in pertinent part, as follows:

> "Should the land be found to be prospectively valuable for oil or gas, the entryman ***will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled ***. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the

> offeror, unless the entryman ***has a preference right, but if the entryman ***prevails in a contest, the offer will be rejected."

The lands involved are embraced in outstanding desert land entries which were granted without mineral reservation. Although the Geological Survey did previously report the lands to be without prospective value for oil and gas, it has informed this Bureau on April 2, 1958, that the lands now have a prospective value for oil and gas within the intent of 43 CFR 192.71. Therefore, if final satisfactory proofs have not yet been furnished for those entries, the Manager is directed to proceed as required by the above-cited regulation, with a view to issuing a lease, pursuant to appellant's lease offer, as soon as practicable. However, if satisfactory final proofs have been furnished, i.e., if equitable title has been earned by the entrymen, the entrymen may not be required to consent to mineral reservation, and the rejection will be allowed to stand. See Sol. Op., 65 I. D. 39 (1958).

The case record is remanded, through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for the further processing specified in this decision.

Edward Woozley

Director

DISTRIBUTION:

Mr. Hampton C. Robinson, Jr. (RegularMail)
Hightower, Gregg & Garland, Attorneys at Law (Certified Mail)
Ass't. to SS (Los Angeles) w/Case File L.A. 0137123
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

In reply refer to:

Los Angeles 0141701
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 13, 1958

Certified Mail
Return Receipt Requested

DECISION

Spencer E. Sully : Oil and Gas
:
:

Manager's Decision Affirmed

Mr. Spencer E. Sully has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated April 2, 1957, which rejected his noncompetitive oil and gas lease offer, Los Angeles 0141701, filed under the provisions of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer, which was filed May 31, 1956, was rejected on the ground that the lands applied for embraced less than the 640 acres required by the regulations and were not within the allowed exceptions to this rule in that the lands were not surrounded by lands not available for leasing (43 CFR 192.42(d)).

The appellant contends that lands adjoining those applied for were' included in prior lease offers, Los Angeles 0138140 and 0138141, filed February 1, 1956, and pursuant to which leases were issued on December 1, 1956, and consequently these lands were not available for leasing at the time his lease offer was filed.

The pertinent Departmental regulation 43 CFR 192.42(d), provides in material part as follows:

> "* * *Each offer must be for an area of not more than 2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any of the following instances: (2) where the land is surrounded by lands not available for leasing under the act.* * *"

In the case of Natalie Z. Shell, 62 I.D. 417 (1955), the Department held that the fact that public land is covered by an outstanding application for an oil and gas lease does not render it not available for leasing, within the meaning of the regulation requiring that, with certain exceptions, an application for an oil and gas lease include not less than 640 acres.

Since the appellant's lease offer covered only 145.75 acres and at the time of his filing there were available for leasing additional contiguous lands, though some of these lands were included in other outstanding oil and gas lease offers, the appellant's lease offer did not meet the requirements set forth in the regulations. At the time this offer was filed, there was no filing of any kind on the $NE\frac{1}{4}NE\frac{1}{4}$ sec. 8.

The Manager's decision rejecting the lease offer was correct, and it is hereby affirmed.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations."

Carl D Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Spencer E. Sully, (Certified Mail)
Minerals Staff Officer
Geological Survey
Appeal List No. 1
WJ

appeal to Sec 8-1-58
affirmed A-27760 8-6-58

In reply refer to:

Sacramento 052987
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 14, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Mr. Duncan Miller has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated May 31, 1957, rejecting his noncompetitive oil and gas lease offer Sacramento 052987 filed October 16, 1956, pursuant to the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected on the basis that the lands applied for are embraced in oil and gas lease Sacramento 052840 issued effective June 1, 1957, to George R. Wickham, 1861 W. Mountain Street, Glendale 1, California, pursuant to his offer to lease filed September 12, 1956.

The appellant contends that Mr. Wickham's lease offer was prematurely filed in that former lease Sacramento 036573 embracing the same land normally would expire at the end of September, 1956, at which time the lands would become available for leasing; and since his lease offer Sacramento 052987 was filed thereafter, it was the first qualified offer.

The record discloses former lease Sacramento 036573 did not expire at the end of its primary term but was relinquished prior thereto, and the relinquishment was noted on the tract book of the Land Office on September 11, 1956, at 4:00 P.M.

The Mineral Leasing Act, *supra*, sets forth the several methods by which an oil and gas lease may be terminated. The regulations, 43 CFR Parts 191 and 192, implementing the statutes, provide for the orderly leasing of lands as well as for termination of such leases. Regulation 192.43 (Circular 1904, March 24, 1955, 20 F.R. 1778), in effect at the time the prior lease was relinquished and when both the subsequent lease offers were filed, provided in this connection that immediately upon notation of a relinquishment in the appropriate tract book record of the land office, the relinquished lands become available for further leasing unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. See *M. A. Machris et al.*, 63 I.D. 161 (1956).

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. *C. T. Hegwer et al.*, 62 I.D. 77 (1955). A lease having been issued to the senior applicant, who was determined to be entitled to the issuance of a lease pursuant to his prior filed offer, the Miller offer was properly rejected for these lands.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Mr. George R. Wickham
1861 West Mountain Street
Glendale 1, California

Acting Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. George Wickham (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

35615

appeal to be affirmed A-27770 12-22-58

8-1

In reply refer to:

Sacramento 047037
Sacramento 047038
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 15, 1958

Certified Mail
Return Receipt Requested

DECISION

Lazare F. Bernhard Alfred Shenberg	:	Oil and Gas

Manager's Decisions Affirmed

Messrs. Lazare F. Bernhard and Alfred Shenberg have each appealed to the Director, Bureau of Land Management, through their designated agent, Mr. Joseph M. Gross, from decisions of the Manager, Land Office, Sacramento, California, dated June 25, 1956, insofar as those decisions required payment of fourth year's rentals which became due on May 1, 1956, under their respective oil and gas leases, Sacramento 047037 and 047038. Both leases were issued effective as of May 1, 1953, pursuant to the provisions of section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Lease Sacramento 047037 included 2,373.60 acres; lease Sacramento 047038 included 1,073.55 acres.

Mr. Gross has not submitted for the records evidence of his eligibility to conduct the appeals for the appellants. The appeals were timely filed, however, and payments of the requisite filing fees were submitted. The appeals are being considered in this instance; however, if further prosecution of these matters is contemplated through the agent, it will be necessary for him to submit proof of his qualifications to do so, as specified in the regulations (43 CFR 1.3).

The record shows each lessee furnished to secure performance of the lease obligations a $1,000 bond, executed March 27, 1953, with respect to lease Sacramento 047037, and March 31, 1953, with respect to lease Sacramento 047038, with the Fidelity and Deposit Company of Maryland, as surety. By section 2(d) of the leases and in accordance with the statutory and regulatory provisions governing rental under the leases (30 U.S.C., 1952 ed., sec. 226; 43 CFR 192.80), each lessee agreed to pay in advance on the first day of the month in which the lease was issued annual rental as specified in the lease. Annual rental for the fourth lease years, in the amount of $593.50 under lease Sacramento 047037, and $268.50 under lease Sacramento 047038, became payable on May 1, 1956. On May 3, 1956, the Land Office issued notices to the lessees to pay these rentals within 30 days under penalty of cancellation of the leases without waiver of the rental due.

rentals due. The lessees received these notices on May 7, 1956. The rentals not having been tendered within the time allowed, and notices not having been received in the Land Office from the lessees prior to the anniversary dates of the fourth lease years subjecting the leases to the provisions of Public Law 555 of July 29, 1954 (30 U.S.C., sec. 188), the leases were cancelled by the Land Office on June 25, 1956, and payments were requested of the rentals due.

The appellants contend they mailed to the Land Office written notices of elections to place the leases under the provisions of the act of July 29, 1954, on February 20, 1956 (prior to the anniversary date of the fourth lease years). They state they executed these notices of election before a notary public, Helen Tutt, and although the notices were not notarized by her, she did enter a record of their execution in her memorandum book of notarizations and she mailed them to the Land Office. The appellants contend therefore that the leases were terminated automatically under the law cited, and that no rentals are due the United States for the fourth lease years.

The record does not disclose that the notices of election to place the leases under the provisions of the 1954 amendatory leasing law were in fact received or filed in the Land Office.

It is well settled that the requirement that a document be filed by a certain date means that it must be actually received by that date in the office where it is to be filed and not merely put in the mails addressed to the proper office in time to reach the proper office in time in the ordinary course of events. John J. Farrelly, et al., 62 I.D. 1 (1955); H. P. Saunders, Jr., 59 I.D. 41 (1945); Willis H. Morris, A-26783 (November 10, 1953).

The Department has held that the automatic termination provisions of the Act of July 29, 1954, supra, are applicable to leases prior to that date only if the lessee files a written consent or election to subject his lease to the provisions of that act. Noel Teuscher, 62 I.D. 470 (1955); Stansbury, Inc., A-27396 (November 20, 1956). The regulation, 43 192.161, makes similar provision. Since the appellants did not file written consent to subjecting the leases to the provisions of the Act of July 29, 1954, and the leases were not cancelled prior to the anniversary dates, the leases were in effect on May 1, 1956. The rentals due on that date, for the fourth lease years, accrued and became debts due the United States. The rentals were due the United States when the leases were cancelled, and there is no authority whereby such accrued rentals may be waived. Robert E. O'Keefe, 57 I.D. 216 (1940); Fred Blair Townsend, A-26270 (October 30, 1951); Robert E. Miller, A-27322 (July 3, 1956); Charles E. Boardman, A-27327 (June 16, 1956); Stansbury, Inc., supra.

Accordingly, the decisions of the Manager are affirmed.

Messrs. Bernhard and Shenberg are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR

Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Lazare F. Bernhard (Certified Mail)
Mr. Alfred Shenberg (Certified Mail)
Fidelity and Deposit Company of Maryland (Regular Mail)
Mr. Joseph M. Gross (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
EG

In reply refer to:

Sacramento 051544
051507
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 9, 1958

DECISION

Lester C. Hotchkiss Alpha L. Hotchkiss	:	Oil and Gas

Manager's Decision Reversed in Part
Conflicting Lease Cancelled in Part

Lester C. Hotchkiss and Alpha L. Hotchkiss have appealed to the Director, Bureau of Land Management, from a decision dated February 1, 1956, by the Manager, Land Office, Sacramento, California, which rejected in part their noncompetitive oil and gas lease offer, Sacramento 051544, submitted November 14, 1955, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected in part because some of the lands were embraced in prior leases.

A portion of the lands in the Hotchkiss offer was available for leasing, and a lease was issued for these lands effective March 1, 1956. In addition some of the lands in the offer were included in leases issued prior to November 14, 1955, the date of the Hotchkiss filing. The decision insofar as it affects these two areas is not appealed.

The Hotchkiss appeal is based on the rejection of the lease offer to the extent of lands applied for which were included in oil and gas lease Sacramento 051507, issued February 1, 1956, to W. T. Woodward, pursuant to offer filed November 1, 1955. The appellants contend that the Woodward offer should have been rejected because it embraced lands not within a six-mile square, and that their offer, being the first valid offer, should be accorded priority as to the lands in conflict.

The facts and principles of law in this case parallel those in a like case which was the subject of a departmental decision dated September 10, 1956, Arnold R. Gilbert, 63 I. D. 329. The Department's decision held: (syllabus):

> "An offer to lease land which cannot be encompassed within a six-mile square is subject to rejection and where a lease is issued for part of the land embraced in the offer it must be cancelled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored."

The reasoning and the rulings in the decision of the Department are applicable in the instant case, and on this basis the decision of the Manager rejecting the Hotchkiss offer must be reversed insofar as it affects the lands in the Woodward lease, and the Woodward lease must be cancelled as to the lands in conflict with the Hotchkiss offer.

However, a portion of the Woodward lease was not in conflict with the Hotchkiss offer at the time the Woodward lease was issued, March 1, 1956. There is no record of any other filings made prior to March 1. Furthermore, no offer filed subsequent to March 1 could be considered valid because of the existing Woodward lease. In view of the fact that the rights of no third party are shown to have been prejudiced by the issuance of the lease to Mr. Woodward on the lands not in conflict with the Hotchkiss offer, there would appear to be no reason for cancelling the Woodward lease insofar as it covers that land, and the Bureau is not disposed to take any further action with respect to that portion of the Woodward lease. Arnold R. Gilbert, supra.

Mr. W. T. Woodward is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeal is taken by Mr. Woodward, then the adverse parties to be served are:

Lester C. Hotchkiss and
Alpha L. Hotchkiss
4239 Tyler Street
Fresno, California.

Edward Woozley
Director

Enclosure

37405

DISTRIBUTION:
Lester C. Hotchkiss and Alpha L. Hotchkiss (Certified Mail)
Gilmore & Gilmore, Attorneys at Law (Regular Mail)
W. T. Woodward (Certified Mail)
Case Files, Sacramento 051507 and 051544
Minerals Staff Officer (5); Geol. Survey (6)
Appeals List No. 1; VJR

In reply refer to:

Los Angeles 099026
099027
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1958

Certified Mail
Return Receipt Requested

DECISION

Morris Lavine : Oil and Gas
:
:

Manager's Decision Affirmed

Morris Lavine has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated November 2, 1956, which rejected his oil and gas lease offers Los Angeles 099026 and Los Angeles 099027, filed December 8, 1952, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed. sec. 226). The offers were rejected by the Manager because they were in conflict with prior oil and gas lease offers, Los Angeles 088434 (formerly Sacramento 041252), filed August 17, 1949, and Los Angeles 088450 (formerly Sacramento 041287), filed August 23, 1949, pursuant to which leases were being offered to Halvor F. Holbeck, the offeror. The Manager stated the leases were being offered to Mr. Holbeck as the first qualified applicant for the lands. He stated that under 43 CFR 192.44(a) an applicant may without losing his priority file Form 4-1158 "Offer to Lease Form" for the lands described in his applications without paying any additional filing fee and rental, and consequently such forms describing the lands according to the plat of survey accepted January 2, 1951, were being forwarded to Mr. Holbeck for execution and return to the Land Office. The record shows the lease forms were returned properly executed and that leases were issued to Mr. Holbeck effective December 1, 1956, under serial Los Angeles 088434 and 088450.

The records disclose Mr. Holbeck had protested the issuance of an oil and gas lease to Del Grant pursuant to offer Sacramento 039381 (later numbered Los Angeles 087866), filed August 19, 1948, which was in conflict with his applications Los Angeles 088434 and 088450, completed on December 18, 1950, on the grounds that the Del Grant application covered lands in an area greatly in excess of six miles square. When his protest was dismissed by the Manager, he appealed in turn to the Director and to the Secretary. While the appeal to the Secretary was awaiting consideration, the conflicting oil and gas lease offer (Los Angeles 087866) was withdrawn by the applicant, Del Grant. Thus it was unnecessary for the Secretary to consider the Holbeck appeal, and by decision A-27333 dated May 7, 1956, it was dismissed. Mr. Holbeck's lease offers were therefore in line for further consideration.

Mr. Lavine contends it was error for the Manager to consider the Holbeck lease offers after the appeal concerning them had been dismissed by the Department; also, that the Land Office decision of November 2, 1956, does not show the Holbeck lease offers contained an adequate description of the lands sought for leasing.

As noted above, the Department did not dismiss the Holbeck appeal on its merits but rather because the issue involved became moot and it was not necessary to consider the appeal. Therefore, it was proper for the Manager to place the Holbeck lease offers in line for further processing when the case records were returned to him from the Department.

Section 17 of the Mineral Leasing Act, supra, provides in pertinent part:

> "When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease * * * shall be entitled to a lease of such lands without competitive bidding."

Thus, a noncompetitive oil and gas lease must be issued to the qualified person who submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. C. T. Hegwer, et al., 62 I. D. 80 (1955).

With respect to the description of lands sought for leasing in the Holbeck offers, the Manager held in his decision of November 2, 1956, that the metes and bounds descriptions in the applications as originally submitted on August 17 and 23, 1949, appear adequate to cover the lands alternately described in the lease forms filed November 29, 1956, as secs. 34 and 35, T. 10½ N., R. 27 W., and sec. 33, T. 10½ N., R. 26 W., S.B.M., and which are now surveyed. The Manager held that plats of survey of the hiatus area involved had been accepted January 2, 1951, and that the applications were processed in the light of the regulations pertaining to unsurveyed lands. 43 CFR, 1949 ed., sec. 192.42(a)(4). The metes and bounds descriptions supplied in the Holbeck lease offers as originally filed were recited in entirety in the Manager's decision of November 2, 1956.

The regulation cited provided in pertinent part as follows:

> "(a) The application must contain in substance the following: **(4) Description of the lands for which a lease is desired, describing the lands by legal subdivisions or, if unsurveyed, by metes and bounds description connected with a corner of the public surveys by courses and distances * *."

There appears to be no basis for disturbing the action of the Manager, and his decisions are hereby affirmed.

Mr. Lavine is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeal is taken Morris Lavine, then the adverse party to be served is:

Halvor F. Holbeck
P. O. Box 437
Cheyenne, Wyoming

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Morris Lavine (Certified Mail)
Mr. Halvor F. Holbeck (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
EG

appeal to Sec. 6-27-58
affirmed A-27810 1-16-59

In reply refer to:

Sacramento 053604
053605
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 27, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decisions Affirmed

Mr. Duncan Miller has appealed from separate decisions of the Manager rejecting his above-noted oil and gas lease offers, filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Each offer was rejected because of conflict with leases issued pursuant to prior-filed offers.

Mr. Miller challenges the validity of the previously issued leases, claiming the offers therefor were invalid.

Appendix "A" attached has been prepared to show the pertinent data concerning the time of filing of the appellant's lease offers and that of the prior lease offers, in conflict therewith, as well as the time relinquishments of previous leases of the same lands were noted on the official tractbook records of the Land Office, in accordance with 43 CFR 192.43 1/. It will be seen that the appellant's lease offers were the junior-filed offers, having been received subsequent to the offers of the other applicants for the same lands.

Section 192.43, in effect at the time the previous leases were terminated, provided in material part that immediately upon notation of a relinquishment in the tractbook of the Land Office, the relinquished lands become available for further leasing unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. See M. A. Machris, et al., 63 I. D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas

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1/ Circular 1904, 20 F.R. 1778, March 24, 1955; amended by Circular 1983 22 F.R. 6967, August 29, 1957.

leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Cf. Frederick D. Anderson, A-26911 (July 28, 1954).

The lands being subject to leasing, the first person to apply for a lease of them after the relinquishment of the prior lease was noted on the tractbook, if otherwise qualified to hold a lease, had a statutory preference right. C. T. Hegwer, et al., 62 I.D. 77 (1955).

In view thereof the Manager's decisions were correct, and they are hereby affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse parties to be served are:

Mr. Justin S. Snow, 8750 Holloway Drive
Los Angeles 46, California

Lester C. & Alpha L. Hotchkiss
4239 Tyler Street, Fresno, California

Signal Oil & Gas Company
811 West Seventh Street, Los Angeles 17, Calif.

Sawyer Exploration Company
Room 610, 650 S. Grand Ave., Los Angeles 17, Calif.

Charles P. Mead

Acting Director

Enclosures 2

Distribution - Page 3

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Justin S. Snow (Regular Mail)
Ferguson & Bosworth, Attorneys at Law (Regular Mail)
Lester C. & Alpha L. Hotchkiss (Regular Mail)
Signal Oil & Gas Company (Regular Mail)
Sawyer Exploration Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (9)
Appeals List No. 1
WJ

APPENDIX "A"

Miller's Offers		Conflicting Leases			Relinquished Leases		
Serial Number Sacramento	Date Filed	Serial Number Sacra.	Date Filed	Lessee	Serial Number Sacra.	Lessee	Noted on Tractbook
053605	3-1-57	053566	2-26-57	Justin S.Snow	037448	Signal Oil & Gas Co.	2-25-57
053604	3-1-57	053370	1-30-57 10:30 AM.	Sawyer Exploration Co.	036788	E.F.Spencer,Sr.	1-30-57 8:30 AM
					036789	E.F.Spencer,Sr.	Ditto
		053436	2-6-57	Lester C. and Alpha L.Hotchkiss	041337	Lester C. and Alpha L.Hotchkiss	2-5-57
		053487	2-14-57 10:00 AM	Signal Oil & Gas Company	037245	Signal Oil & Gas Company	2-14-57 8:30 AM.
		053469	2-12-57 10:00 AM.	Justin S. Snow	037375	Ditto	2-12-57 8:45 AM
					037427	"	Ditto

appeal to Sec 7-21-58
affirmed A-27813 1-30-59

In reply refer to:

Sacramento 054042
054160
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Bernie B. Bergevin :
Tom Boskovich : Oil and Gas
:

Decisions Affirmed

The above-named individuals have appealed from separate decisions of the Land Office rejecting their respective oil and gas lease offers, enumerated above, which were filed under the Act of May 21, 1930 (30 U.S.C., secs. 301-306; 43 CFR 200.80-200.87), and involve lands in Southern Pacific Railroad and Union Pacific Railroad rights-of-way in California. The decisions stated the law and regulations cited authorize disposition of oil and gas deposits under such rights-of-way by lease to the owner of the rights-of-way or his assigns or by agreement with a lessee or owner of adjoining lands providing for compensatory royalty. The decisions held the lease offerors had not shown they were so qualified to receive the leases sought.

The appellants contend a recent Supreme Court ruling has defined mineral rights under railroad beds and rights-of-way as public domain and subject to lease for oil and gas development by the public generally.

It is believed the appellants have reference to the recent case of United States v. Union Pacific Railroad Company, 353 U.S. 112 (April 8, 1957); however, the ruling in this case was not precisely as stated by the appellants. This was an action brought by the United States to enjoin the Union Pacific Railroad Company from drilling for oil and gas on the land in the right-of-way granted to it under authority of section 2 of the Act of July 1, 1862 (12 Stat. 489, 491), for construction of a railroad and telegraph line. In addition to the land for right-of-way purposes, section 3 of the Act provided for a further grant of lands to the railroad for the purpose of aiding in the construction of the railroad. However, section 3 also provided "that all mineral lands shall be excepted from the operation of this Act." In the above opinion, the Supreme Court construed the term "mineral lands" as used in section 3 to include the mineral rights in lands within the right-of-way granted under section 2 as well, and held that the minerals within said railroad right-of-way land belonged to the United States. The issue before the Supreme Court did not determine the nature of the alternate section grant under section 3 but only the question of the title to the minerals in the right-of-way granted under section 2 of the granting act.

The oil and gas deposits owned by the United States in railroad rights-of-way are subject to disposition by this Department only in conformity with the law and the regulations cited in the Land Office decisions from which these appeals were taken. Those decisions were correct, and they are hereby affirmed.

Bernie B. Bergevin and Tom Boskovich are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Carl D Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Bernie B. Bergevin (Certified Mail)
Mr. Tom Boskovich (Certified Mail)
Mineral Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
EG

appeal to Sec
affirmed A-27837 - 10-29-58
recd

In reply refer to:
Los Angeles 0155757
0155763
0155789
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 23, 1958

Certified Mail
Return Receipt Requested

DECISION

Richard P. De Smet :
Duncan Miller and : Oil and Gas
Esther H. Krohn :

Manager's Decision Affirmed

Messrs. DeSmet and Miller and Mrs. Krohn have appealed from a decision of May 9, 1958, rejecting their respective simultaneously-filed lease offers, Los Angeles 0155757, 0155763 and 0155789. The offers were rejected for the reason that the lands applied for were embraced in outstanding leases Los Angeles 060259 and 060259-B.

Lease 060259 was issued effective March 1, 1948 for a primary term of five years and was extended for an additional five-year term, from March 1, 1953 to February 28, 1958. No production was obtained from the leasehold. On January 28, 1958, a partial assignment from the record titleholder, Richfield Oil Corporation, to Mr. Fitzgerald, was submitted for approval. Approval of the partial assignment was effective February 1, 1958. The approval contained the statement that "In accordance with 43 CFR 192.144(b) the lease terms of 060259 and 060259-B are considered further extended for two years from February 1, 1958."

The appellants contend that lease 060259 expired at the termination of its 10th lease year and was not further extended. They argue that the lease, and the initial extension thereof, is subject to the provisions of the Mineral Leasing Act as amended by the Act of August 8, 1946, and that the extension provisions of the Act of July 29, 1954 (30 U.S.C., 1952 ed., Supp V., Sec. 187a) are not applicable.

The amendatory leasing act of July 29, 1954, _supra_, provides, in pertinent part, that:

> "Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities."

The issue raised in the appeals has been considered in a series of Solicitor's opinions, M-36278, 62 I.D. 216 (1955), M-36398, 64 I.D. 135 (1956), and M-36432, 64 I.D. 127 (1957). The question was also fully discussed in the case of Raymond J. and Harold J. Hansen et al., A-27503 (January 3, 1958). In the Hansen case it was held that:

> "The assignment of part of the lands included in a lease during the single 5-year extension of the term allowed under section 17 of the Mineral Leasing Act, as amended, segregates the assigned and the retained portions of the lease, and although there is no production on any part of the leased lands at the time of assignment or on the retained portion thereafter, the retained portion of the lease (as well as the assigned portion) continues in full force and effect for a minimum period of 2 years after the assignment, in accordance with section 30(a) of the act, as amended by the act of July 29, 1954, even though the 2-year extension will continue the segregated lease beyond the end of the 5-year extension of the original lease." (Syllabus; insert in parenthesis added.)

It follows that leases 060259 and 060259-B will continue in effect for two years from February 1, 1958, and so long thereafter as oil or gas is produced in paying quantities. The appellants' lease offers, filed when the lands applied for were embraced in valid existing leases, were properly rejected. Joyce A. Cabot et al., 63 I.D. 122 (1956).

Accordingly, the decision appealed from is affirmed.

Messrs. DeSmet and Miller and Mrs. Krohn are allowed the right of appeal to the Secretary of the Interior in accordance with regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken then the adverse parties to be served are:

Richfield Oil Corporation
555 S. Flower Street
Los Angeles 17, California

and

Thomas J. Fitzgerald
412 Haberfelde Bldg.
Bakersfield, California

Earl J. Thomas
Acting Director

Enclosure

DISTRIBUTION
Richfield Oil Corporation (Regular Mail)
Thomas J. Fitzgerald (Regular Mail)
Richard P. DeSmet (Certified Mail)
Duncan Miller (Certified Mail)
Mrs. Esther H. Krohn (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (9)
Appeals List No. 1
BF

In reply refer to:

Sacramento 052768
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Henry Casperson and	:	Oil and Gas
James P. Witmer	:	
	:	

Decision Affirmed

Messrs. Casperson and Witmer have appealed from a rejection of their above-noted oil and gas lease offer on September 13, 1956. The offer was filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), and was rejected for the reason that the "offer to lease was filed at 10 :43 a.m. on September 4, 1956, too late to be considered in a drawing. Other offers for the same land were filed simultaneously at 10:00 a.m. on September 4."

The appellants contend inasmuch as their application was delivered by the post office in the first mail, although the mail delivery on that date was not in accordance with the usual practice but was later than 10:00 a.m., it should be considered as having been filed at the opening of business, namely 10:00 a.m., September 4.

An oil and gas lease offer may be filed by the offeror in person, or he may use the United States mails as his agent for delivering a letter to the local land office. An offer will be considered filed when it is received in the proper office during business hours. 43 CFR 192.42(b). In consonance with such regulation, Instruction 4, on the reverse side of the lease offer states in pertinent part, that "The term 'filing' means the actual receipt of the offer in the proper land office." Under the quoted regulation and instruction, a "filing" is not complete until the document is delivered to the proper office. Even if, as claimed by the appellant, the letter, in the usual course of the mails, could have reached the Land Office by 10:00 a.m., the fact nevertheless remains that the offer was not filed at that time, "for a paper is considered filed only at a time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was negligent." H. P. Saunders, Jr., 59 I.D. 41, 43 (1945); John J. Farrelly, et al., 62 I.D. 1 (1955).

Obviously the receipt of the appellants' lease offer at 10:43 a.m. may not be considered as having been filed at any time earlier than when actually received in the Land Office. To this extent the Manager's decision was correct.

It has been the long established policy of the Department to hold a junior-filed application in suspense pending final adjudication of the senior-filed application, but upon favorable consideration of the first filed application, a later filed application must be rejected. In the instant case the Manager rejected the junior-filed application prior to final adjudication of the earlier-filed applications. This was error. However, the Manager later determined that the earlier-filing offerors were entitled to leases for the land involved in this appeal, and leases for those lands have been issued to them. Therefore, since no useful purpose would be served by reinstating the appellants' lease offer, merely to reject it because of the properly-issued leases, the Manager's decision is affirmed.

Messrs. Casperson and Witmer are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

In the event of an appeal the adverse parties to be served with copies thereof are:

Messrs. Peter J. and Paul B. Zydner
1122 King Street
Bakersfield, California (Sacramento 052756)

Mr. Victor P. Paganucci
517 Merchant Street
Sacramento, California (Sacramento 052755)

Edward Woozley
Director

Enclosure

DISTRIBUTION
Henry Casperson and James O. Witmer (Certified Mail)
Messrs. Peter J. and Paul B. Zydner (Regular Mail)
Mr. Victor Paganucci (Regular Mail)
Case Records Sacramento 052755 and 052756
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

In reply refer to:

Sacramento 038241
038241-A
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 6, 1958

DECISION

Charles C. Reed :
William F. Daggett, Jr. : Oil and Gas

Decision Reversed
Cases Remanded For Further Processing

Noncompetitive oil and gas lease Sacramento 038241 was issued effective February 1, 1948, for a five-year term; it was extended for an additional five-year term through January 31, 1958. A partial assignment from the record titleholder to The Texas Company was approved effective February 1, 1956; the portion assigned was given serial number 038241-A. On January 30, 1958, within the five-year extended term, Reed assigned portions of the parent lease (which he now owns), and of the "A" lease, to William F. Daggett, Jr. The Manager, by decision of February 17, 1958, denied approval of the two partial assignments and held, in effect, that the partial assignment of February 1, 1956, extended both the parent and "A" lease for a period of two years (to January 31, 1958) and that neither lease may be further extended by partial assignments. Both Reed and Daggett have appealed from that decision.

The appellants contend that the Manager misconstrued the meaning of the Mineral Leasing Act (30 U.S.C. sec. 187a), as amended by the Act of July 29, 1954, as well as the Solicitor's opinions cited in his decision and that the partial assignments are entitled to approval, the leases thereby being further extended for a period of two years to January 31, 1960, and so long thereafter as oil or gas is produced in paying quantities.

The amendatory leasing act of July 29, 1954, provides, in pertinent part that:

> "Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities."

The issue raised in this appeal has been considered in a series of Solicitor's Opinions, 62 I.D. 216 (1955), 64 I.D. 135 (1956) and 64 I.D. 127 (1957). Also see Raymond J. and Harold J. Hansen et al., A-27503 (January 3, 1957). It is clear that lease 038241 was in its extended term in January, 1958. It follows, from the language of the cited text, supra, and the opinion reported in 64 I.D. 127, that the leases were each entitled to a two-year extension beyond the normal ten-year primary and extended terms upon approval of the partial assignment(s) made during the extended term of the base lease or segregated portion thereof. Of course, further extensions by reason of partial assignments are not allowed.

Accordingly, the decision appealed from is reversed and the case records are being remanded for approval of the partial assignments, all else being regular.

Edward Woozley
Director

DISTRIBUTION:

SS (Sacramento) w/case records
Mr. Roscoe R. Hess, Attorney (Regular Mail)
Mr. Charles C. Reed (Regular Mail)
Mr. William E. Daggett, Jr. (Regular Mail)
Hon. Thomas H. Kuchel, U. S. Senate
Minerals Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
BF

40658

In reply refer to:

Los Angeles 0143157
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 15, 1958

Certified Mail
Return Receipt Requested

DECISION

Marion E. MacQueen	:	Oil and Gas
	:	
	:	

Decision Affirmed

Marion E. MacQueen has appealed from a decision of the Land Office, dated May 16, 1957, rejecting noncompetitive oil and gas lease offer, Los Angeles 0143157, filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer was rejected because the acreage applied for was less than the 640-acre minimum prescribed in the regulations and there were available at the time of filing of the offer contiguous lands, and because the acreage applied for could not be encompassed within a six-mile square. 43 CFR 192.42(d).

The record shows the lease offer described only 564.62 acres of available land, that these lands are not surrounded by lands not available for leasing, and that the acreage applied for cannot be embraced within a 6-mile square. The record shows lots 2 and 4 sec. 2, T. 5 N., R. 23 W., 88.76 acres, were included in an outstanding oil and gas lease, Los Angeles 080158, when this offer was filed, and that lot 3 sec. 2, same township and range, 44.38 acres, was patented land without mineral reservations to the United States.

The Department has held the minimum acreage requirement of 640 acres for each oil and gas lease offer refers to land which is available for oil and gas leasing at the time the offer is filed. Eugene J. Bernardini et al., 62 I.D. 232 (1955). It has held also that an offer for land which cannot be embraced within a 6-mile square is properly rejected, in accordance with the regulation cited above. Arnold R. Gilbert, 63 I.D. 328 (1956)

In view of the foregoing, the application was properly rejected, and the decision appealed from is affirmed.

Marion E. MacQueen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Karl J Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Marion E. MacQueen (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

In reply refer to:

Los Angeles 0145192
0145459
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 22, 1958

Certified Mail
Return Receipt Requested

DECISION

Harold Harby	:	Oil and Gas

Decisions Affirmed

Mr. Harby has appealed from decisions dated February 14, 1957, rejecting his noncompetitive oil and gas lease offers Los Angeles 0145192 and Los Angeles 0145459, filed October 22, 1956, and November 1, 1956, respectively, under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offers, each describing the N½S½NE¼SE¼ sec.22, T.5 N., R. 17 W., S.B.M., California, were rejected because the acreage applied for was less than the 640-acre minimum prescribed in the regulations and there were available at the time of filing of the lease offers contiguous lands to those applied for. 43 CFR 192.42(d).

The record shows the 10-acre tract applied for was patented to Mr. Norman C. Winkler under the Stockraising Homestead Act of December 29, 1916 (43 U.S.C., secs. 291-301), patent #913355 having been issued to him on July 30, 1923. [1]

The appellant asserts that he is the surface owner of the land applied for and he contends he is therefore entitled to a preference right to a lease of the lands without regard to the minimum acreage requirement in the regulations.

The contentions of the appellant are not meritorious. There is no authority in the Mineral Leasing Act, as amended, supra, for according preference rights to the owners of land estates patented under the Stockraising Homestead Act, supra, in the leasing of the reserved oil and gas deposits in the lands. Furthermore, with respect to the minimum acreage requirement, the Department has held in the case of Annie Dell Wheatley et al., 62 I.D. 292, that the "The regulation is not in conflict with the express statutory provisions of the Act, it is reasonably adapted to the carrying out of the purposes of the act, and, when considered in connection with the abuses it was designed to correct, it is a reasonable exercise of the discretion conferred upon the Secretary of the Interior by the act. It does not deprive an offeror of any right to which he may be entitled under the act ***. An applicant for the privilege of leasing public lands cannot complain because he is required to meet the requirements imposed upon all other applicants for that land. The Secretary merely requires that one who seeks to take advantage of the provisions of the Mineral Leasing Act shall do so in such a manner that abuses of the privileges shall be minimized and administrative difficulties lessened."

---

[1] In addition to the tract applied for, adjoining lands were available for oil and gas leasing when the appellant's offers were filed.

Accordingly, the decisions appealed from are affirmed.

Mr. Harby is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Harby, the adverse parties to be served are:

Mr. C. D. Jones
900 Wilshire Blvd.
Los Angeles, California

Mr. Duncan Miller
Box 44785 Hancock Station
Los Angeles, California

Earl J Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. Harold Harby
Mr. C. D. Jones
Mr. Duncan Miller
Minerals Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
EG

appeal to Sec
Affirmed A-27897 3/31/59

In reply refer to:

Los Angeles 0143605
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 19, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Manager's Decision Affirmed

Duncan Miller appealed from a decision of the Manager dated July 22, 1957 which rejected his oil and gas lease offer Los Angeles 0143605, filed September 6, 1956, for the reason that the lands applied for were embraced in oil and gas lease Los Angeles 0143255 issued to Frederick D. Anderson effective August 1, 1957 pursuant to an offer filed August 10, 1956.

In his appeal, Mr. Miller questions the propriety of the filing of lease offer Los Angeles 0143255 in that the lands were embraced in prior lease which was relinquished shortly before it would have expired.

The record discloses former lease Los Angeles 056577 embracing the same land issued October 1, 1946 did not expire at the end of its extended term but was relinquished prior thereto, and the relinquishment was noted on the tract book of the land office on August 9, 1956.

The regulation (43 CFR 192.43), in effect at the time the prior lease was relinquished and when both the subsequent lease offers were filed, provided:

> "Where the lands embraced in a relinquished or cancelled noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the cancellation or relinquishment on the tract book ***"

In his appeal Mr. Miller also stated: "Offer 0143255 was filed for less than 640 acres and the lands were isolated by reason of the relinquishment noted above." Mr. Miller here appears to be relying on regulation 43 CFR 192.42 (d) (2), which, in pertinent part, provides as follows:

> " *** Each offer *** may not be for less than 640 acres, except *** (2) Where the land is surrounded by lands not

> available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment." (Emphasis added).

The relinquishment here was not a partial relinquishment but a total relinquishment of prior lease Los Angeles 056577. Moreover the 80 acre tract embraced in the relinquished lease, was not adjacent to any other lands available for leasing. Therefore this (80 acre) tract included in lease offers 0143255 and 0143605 was not isolated "as a result of" the relinquishment; it was already isolated even before the relinquishment as the surrounding lands were not available for leasing. It follows, from the very wording of the regulation (43 CFR 192.42 (d) (2), that this tract is excepted from the 60 day limitation and that the lands were available for leasing immediately upon notation of the relinquishment on the tract book. See Melvin A. Brown, et al., Montana 010794 etc. (August 23, 1957).

A noncompetitive oil and gas lease must be issued to the first qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such a lease which must be honored. C. T. Hegwer et al., 62 I.D. 77 (1955). Since Mr. Anderson's offer was a proper filing, it was proper for the Manager to issue a lease pursuant thereto, and to reject Mr. Miller's subsequently-filed offer. Accordingly the decision of the Manager is affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is: Mr. Frederick D. Anderson, 931 Subway Terminal Bldg. Los Angeles 13, California.

Edward Woozley
Director

Enclosure

Distribution:
Mr. Duncan Miller (Certified Mail)
Mr. Frederick D Anderson (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

appeal to Sec.
affirmed A-27892 4-21-59

In reply refer to:
Los Angeles 0143477
0143476
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1958

Certified Mail
Return Receipt Requested

DECISION

George R. Wickham : Oil and Gas

Decision Affirmed

Mr. Wickham has appealed from a decision of July 12, 1957 rejecting his oil and gas lease offer, Los Angeles 0143477. The appellant's offer was rejected for the reason that lease, Los Angeles 0143476, for the identical land was issued to Raymond J. Hansen, the prior applicant. Hansen's offer was filed on August 28, 1956 at 10:01 a.m., while the appellant's was filed on the same day at 10:08 a.m.

The appellant contends that both he and Hansen arrived at the Land Office at practically the same instant just prior to 10:00 a.m. and that their offers should be considered as simultaneously filed.

The Manager afforded all persons waiting for the Land Office to open for business on August 28, 1956, the opportunity of having their applications time stamped 10:00 A.M. by handing him their applications. Neither the appellant nor Hansen took advantage of this procedure. Rather each chose to wait his turn and when the office opened for business at 10:00 a.m., Hansen went to file his application, whereas the appellant admittedly proceeded to verify the tract book after which he filed his application. As a result neither filing came within the definition of simultaneously filed offers and the one actually received before the other is entitled to preference. Solicitor's Opinion 64 I.D. 124 (1957). The time stamp of the Land Office affixed to the offers herein involved must be accepted as the time of filing. Cf. Margaret A. Andrews, 64 I.D. 9 (1957).

The Manager properly issued a lease to Mr. Hansen whose application or offer was first received and his decision rejecting the appellant's offer was correct and is hereby affirmed.

Mr. George R. Wickham is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Wickham then the adverse party to be served is:

Raymond J. Hansen
150 South Avenue 55
Los Angeles 42, California

Earl J. Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. George R. Wickham (Certified Mail)
Mr. Raymond J. Hansen (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

appeal to Sec
affirmed A-27915 5-19-59

In reply refer to:

Los Angeles 0157765
0157761
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 14, 1958

Certified Mail
Return Receipt Requested

DECISION

George S. Thompson
Mary Louise Thompson : Oil and Gas
Frank Perew, Jr. :
Josephine E. Perew :
:

Decisions Affirmed

The above-named individuals have appealed from separate decisions of the Manager, dated May 9, 1958, rejecting their respective oil and gas lease offers, submitted pursuant to the Mineral Leasing Act, as amended (30 U.S.C. sec. 181 et seq.). Each rejection was based upon a finding that the total acreage applied for was less than 640 acres or the equivalent of a section and was not within one of the exceptions in 43 CFR 192.42(d).

The appellants contend that the land is isolated within the meaning of 43 CFR 192.42(d) since the only surrounding land that is not patented without an oil and gas reservation is a part of the drainage area of the Dry Canyon Reservoir of the City of Los Angeles and should not be subject to oil and gas leasing. This contention is refuted, however, in the appellants' statements on appeal that the adjoining land in question was leased previously by this Department (lease Los Angeles 055643, dated September 1950, which was relinquished on September 19, 1957).

The records show the following described lands which adjoin the lands applied for by the appellants herein were available for the filing of lease offers on May 1, 1958, when their lease offers were filed: S½ sec. 23, NW¼NE¼ and NE¼NW¼ sec. 26, N½NW¼ sec. 25, T. 5 N., R. 16 W., S.B.M., California. The records further show that these lands were then included, among other lands, in oil and gas lease offer Los Angeles 0153093, which was filed September 20, 1957.

It was held by the Department in the case of Natalie Z. Shell, 62 I.D. 417 (1955), that the fact that public land is covered by an outstanding application for an oil and gas lease does not render it not available for leasing within the meaning of regulation 43 CFR 192.42(d), requiring that, with certain exceptions, an application for an oil and gas lease include not less than 640 acres.

The land applied for by the appellants not being isolated since adjoining public land, even though covered by an outstanding lease application, was available for leasing at the time their respective lease offers were filed, the rejection of the lease offers was correct.

The decisions of the Manager are hereby affirmed.

The appellants are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

George S. Thompson and Mary Louise Thompson (Certified Mail)
Frank Perew Jr., and Josephine E. Perew (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
LS

43552

In reply refer to:

Los Angeles 0130566
0137920
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 20, 1958

Certified Mail
Return Receipt Requested

DECISION

Jerry H. Powell Duncan Miller	:	Oil and Gas

Rejection of Lease Offers Affirmed

Jerry H. Powell and Duncan Miller have appealed from a decision of the Manager, dated May 9, 1957 rejecting their noncompetitive oil and gas lease offers Los Angeles 0130566 and 0137920 for the same land, submitted under the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359). The Manager held, since the land is situated in unincorporated Los Angeles County Territory surrounded by incorporated territory of the City of Long Beach, 1/ it is excluded from oil and gas leasing under the act cited by sec. 3(a) thereof.

The appellants assert since the lands are not a part of the incorporated City of Long Beach, California, that they are not excluded from leasing under the law cited.

The Department held in the case of D. Miller, A-27378, decided October 15, 1956, that the matter of whether or not the lands are in the "city proper" is immaterial if the lands are within an incorporated city.

The record shows that the lands were acquired by condemnation proceedings as a site for a naval hospital and that jurisdiction over the oil and gas deposits in the lands was transferred to the Department of the Interior by Public Land Order 591 of June 16, 1949 (14 F. R. 3414). The transfer to this Department of jurisdiction over the oil and gas deposits by Public Order No. 591 did not and could not have the effect of making them subject to leasing under the mineral leasing laws. The only authority that this Department has over the deposits is the implied authority which is vested in the executive branch of the Government to take protective

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1/ U.S.G.S. Los Alamitos Quadrangle, Ed. of 1950; Thomas Bros. Atlas of Los Angeles County, 1955 Ed.

measures in cases where land owned by the United States and not subject to the mineral leasing laws is found to contain oil and gas deposits which are being drained by adjoining owners. (40 Op. Atty. Gen. 41). Moreover, part of the lands here involved is situated within the known geologic structure of the Seal Beach field, and in the exercise of the above authority it is in the public interest to offer lands believed to be within the known geological structure of a producing field for leasing on a competitive basis. A. P. Scott, A-25846, July 25, 1950.

The rejection of the lease offers is affirmed.

Messrs. Powell and Miller are each allowed an appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Powell, then the adverse party to be served is:

Mr. Duncan Miller
Box 44785
Hancock Station
Los Angeles 44, California

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Mr. Jerry H. Powell
538 S. Flower Street
Los Angeles, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Jerry H. Powell (Certified Mail)
Mr. Duncan Miller (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

appeal to Sec
Affirmed A-27914 3/31/59

In reply refer to:
Sacramento 052811
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 20, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed as Modified

Duncan Miller appealed from the Manager's decision dated April 23, 1957 rejecting his oil and gas lease offer Sacramento 052811, filed September 4, 1956 for the reason that the lands applied for are embraced in oil and gas lease Los Angeles 052576 issued to Justin S. Snow and oil and gas lease Los Angeles 052740 issued to Southern California Petroleum Corporation pursuant to their prior filed offers.

Mr. Miller challenges the validity of the previously issued leases claiming the offers therefor were invalid.

Appenidx "A" attached shows the pertinent data concerning the time of filing of the prior lease offers in conflict therewith, as well as the time relinquishments and termination of previous leases of the same lands were noted on the official tractbook records of the Land Office, in accordance with 43 CFR 192.43. It will be noted that the appellant's lease offer was the junior filed offer, having been received subsequent to lease offers Los Angeles 052740 and 052576.

Section 192.43, in effect at the time the previous leases were terminated, provided in material part that immediately upon notation of a relinquishment in the tractbook of the Land Office, the relinquished lands become available for further leasing unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. See Margaret A. Andrews, et al., 64 I.D. 9 (1957). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Duncan Miller, A-27649 etc. (August 6, 1958).

The lands being subject to leasing, the first person to apply for a lease of them after the relinquishment of the previous lease was noted on the tractbook, if otherwise qualified to hold a lease, had a statutory preference right to a lease. C. T. Hegwer, et al., 62 I.D. 77 (1955).

It is to be noted that while the Manager's decision stated that lots 11 and 12 sec. 7, T. 30 S., R. 21 E., M.D.M., California are embraced in Sacramento 052740, the records show that the lands were embraced in oil and gas leases Sacramento 030454-C and 030454-G which have terminated September 30, 1956 subsequent to the date the subject lease offer and lease offer Sacramento 052740 were filed. As to those lands Mr. Miller's lease offer is rejected as being in conflict with said leases. See Joyce A. Cabot, et al., 63 I.D. 122 (1956). To this extent oil and gas lease Sacramento 052740 was issued improperly and should be cancelled as to the lands in lots 11 and 12. See B. E. Van Arsdale, 62 I.D. 475 (1955) and cases cited therein.

Accordingly the Manager's decision is affirmed as modified. When this decision becomes final, case file Sacramento 052740 will be returned to the Land Office through the Bureau's State Supervisor for further appropriate action in accordance with this decision.

Duncan Miller and the Southern California Petroleum Corporation are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller then the adverse parties to be served are:

Mr. Justin S. Snow, 8750 Holloway Drive, Los Angeles 46, California

Southern California Petroleum Corporation, 612 South Flower St.,
Los Angeles 17, California.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Justin S. Snow (Regular Mail)
Southern California Petroleum Corporation (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

Appendix "A"

Land Description (T. 30 S., R. 21 E., M.D.M.)	Conflicting Leases	Prior Leases	Status
Sec. 7 Lot 8	Serial No. (Sacramento) 052576 Filed 7/20/56 10:01 A.M. Lessee - Justin S. Snow	Serial No. (Sacramento) 034054-D Lessee - Justin S. Snow	Relinquishment noted 7/19/56 4:00 P.M.
Sec. 7 Lots 9 & 10	Serial No. (Sacramento) 052740 Filed 8/30/56 10:00 A.M. Lessee - So. Cal. Petrol. Corp.	Serial No. (Sacramento) 032703	Relinquishment Noted 8/30/56 8:00 A.M.
Sec. 7 Lot 11	Serial No. (Sacramento) 052740 Filed 8/30/56 10:00 A.M. Lessee - So. Cal. Petrol. Corp.	Serial No. (Sacramento) 034054-C Lessee - Union Oil Co. of Calif. & Hancock Oil Co.	Termination by Operation of Law 9/30/56
Sec. 7 Lot 12	Serial No. (Sacramento) 052740 Filed 8/30/56 10:00 A.M. Lessee - So. Cal. Petrol. Corp.	Serial No. (Sacramento) 034054-G Lessee - Lyle Snow	Termination by Operation of Law 9/30/56
Sec. 7 E$\frac{1}{2}$NW$\frac{1}{4}$	Serial No. (Sacramento) 052576 Filed 7/20/56 10:01 A.M. Lessee - Justin S. Snow	Serial No. (Sacramento) 034054-A Lessee - Hancock Oil Co.	Relinquishment Noted 7/19/56 4:00 P.M.
Sec. 8 Lots 4 & 5, SW$\frac{1}{4}$NW$\frac{1}{4}$	Serial No. (Sacramento) 052740 Filed 8/30/56 10:00 A.M. Lessee - So. Cal. Petrol. Corp.	Serial No. (Sacramento) 032703-A	Relinquishment Noted 8/30/56 8:00 A.M.

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0139087
5.04g

October 24, 1958

Certified Mail
Return Receipt Requested

DECISION

Nathan R. Berke and
Irwin Rubenstein

:
: Oil and Gas
:

Decision Affirmed

The above-named individuals have appealed from the Manager's decision dated August 29, 1957, which cancelled their lease of the NW$\frac{1}{4}$SW$\frac{1}{4}$ Sec. 33, T. 3 N., R. 14 W., S.B.M., California, because at the time the lease offer was filed, March 1, 1956, the land described in the offer was not surrounded by unavailable land (43 CFR 192.42 (d) (2)), a part of the NE$\frac{1}{4}$SW$\frac{1}{4}$ section 33, contiguous thereto, being then included in lease offer Los Angeles 0135929 filed October 3, 1955.

The record shows there was a pending lease offer for the land described above, Los Angeles 0143033, filed July 27, 1956, which was a valid offer at the time of filing, the land sought not then being surrounded by available land. Lease Los Angeles 0135929 was issued effective June 1, 1956.

The first qualified applicant for land available for oil and gas leasing has a statutory preference right to a lease, if a lease is to be issued for the land, which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955).

The Department has held that the fact that the land is covered by an outstanding offer for an oil and gas lease does not render it unavailable for leasing within the meaning of the regulation requiring that, with certain exceptions, an application for an oil and gas lease must include not less than 640 acres of land available for leasing at the time the application is filed. Natalie Z. Shell, 62 I.D. 417 (1955). Since less than 640 acres of land were applied for under offer Los Angeles 0139087 and additional contiguous lands were available for leasing, as contemplated in the Shell decision, supra, at the time the lease offer was filed, the offer was subject to rejection for noncompliance with the regulation cited above. The lease which was issued pursuant thereto, in contravention of the statutory preference right of the offeror under Los Angeles 0143033, was properly cancelled. Arnold R. Gilbert, 63 I.D. 328 (1956).

The Manager's decision is correct, and it is affirmed.

Nathan R. Berke and Irwin Rubenstein are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Nathan R. Berke and Irwin Rubenstein, then the adverse party to be served is:

Mr. Raymond J. Hansen
150 South Avenue 55
Los Angeles 42, California

Carl J Thomas
Acting Director

Enclosure

DISTRIBUTION:

Nathan R. Berke and Irwin Rubenstein (Certified Mail)
Raymond J. Hansen (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

43552

Appeal to be affirmed A-27923 - 3/31/59

In reply refer to:

Los Angeles 0143673
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C. October 31, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Miller has appealed from a decision of November 21, 1957, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0143673, filed September 10, 1956. The offer was rejected for the reason that the lands applied for were included in lease 0143595 which was issued to Sawyer Exploration Company pursuant to its prior offer filed September 6, 1956.

The appellant states that the lands involved were previously embraced in a lease owned by Sawyer, and that Sawyer relinquished that lease for the sole purpose of refiling for the identical lands. He contends, in effect, that such practice is illegal and therefore, the offer 0143595 was not a proper offer and should have been rejected. He asserts his offer was the first properly filed application pursuant to which a lease should be issued.

The Bureau, in accordance with well defined Departmental precedents, has consistently held that lands relinquished out of a prior lease become available for leasing upon notation of the relinquishment upon the appropriate tract book (M.A. Machris, et al., 63 I.D. 161 (1956)); and that there is no prohibition against a lessee relinquishing a lease and then refiling for the same lands after appropriate notation has been made of the relinquishment on the tract book record of the Land Office. See Bureau decisions Duncan Miller, Sacramento 052808[1] (January 27, 1958); 052987[1] (May 14, 1958); 052316[2] (November 22, 1957); New Mexico 033506[1] (May 16, 1958); Cf. Duncam Miller et al., A-27457 (June 26, 1957).

Since Miller was the junior filing applicant for lands embraced in his lease offer, his offer was properly rejected after issuance of a lease to the senior filing applicant. B.M. Shotkin, A-27469 (September 24, 1957). Accordingly, the decision appealed from is affirmed.

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[1] A-27649, etc. (Aug. 6, 1958)

[2] A-27620 (July 28, 1958)

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Sawyer Exploration Company
650 So. Grand Avenue
Los Angeles 17, California

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION:
Mr. Duncan Miller (Certified Mail)
Sawyer Exploration Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
BF

affirmed A-27959 8-3-59

In reply refer to:
Los Angeles 0156995
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 10, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from a decision of the Manager, dated June 30, 1958, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0156995, [1] and dismissing his protest against issuance of a lease pursuant to prior filed offer Los Angeles 0123734. The Manager stated the offer 0123734 was the first valid offer for the lands. The Manager held that there is no requirement for any administrative determination before lands in an expired lease become available for further filing; consequently, the land in question became available for filing of oil and gas offers the first business day after expiration of the former leases.

The appellant contends in substance that the former leases for the land described in his offer did not expire by operation of law but were cancelled, requiring a notation on the tractbook records of the Land Office before any new lease offers could be filed.

The record discloses that the land involved in the appeal was formerly included in oil and gas leases 056682 and 076663, which were extended through December 31, 1954, at which time they expired by operation of law, and since no further act of the Bureau was necessary to terminate them, the land became available for further leasing on the first business day thereafter. George R. Wickham, Los Angeles 056682, 076663, 0129445 (August 21, 1957). Lesh C. Forrest filed his oil and gas lease offer, Los Angeles 0123734, on January 3, 1955, the first business day after expiration of the former leases. Mr. Miller filed his application for the land on April 9, 1958, subsequent to the Director's decision in the case of George R. Wickham, supra. Oil and gas lease offer Los Angeles 0123734, as the prior-filed lease offer, was entitled to priority in the issuance of a lease, and the lease was issued properly. C. T. Hegwer, et al., 62 I.D. 77.

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[1] Filed pursuant to the provisions of the Mineral Leasing Act, as amended (30 U.S.C. sec. 181 et seq.).

Accordingly, the decision of the Manager is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller then the adverse party to be served is:

Lesh C. Forrest
8750 Holloway Drive
Los Angeles 46, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Lesh C. Forrest (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
LS

45092

appeal to Sec
affirmed A-27959 A 8-3-59

In reply refer to:

Los Angeles 0143604
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 10, 1958

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas
:
:

Manager's Decision Affirmed

Mr. Duncan Miller appealed from a decision of the Manager dated November 12, 1957, rejecting his oil and gas lease offer, filed September 6, 1956, for the reason that the land applied for is embraced in oil and gas lease Los Angeles 0143254 issued October 1,1957, to James P. Witmer, pursuant to his offer filed August 10, 1956.

In his appeal, Mr. Miller states that the lessee of the lands was apparently the same person who held the previous lease of the same lands and who relinquished the lease for the purpose of refiling for the same lands, hence, that the offer pursuant to which the present lease was issued was an improper and invalid offer.

The records show that the lands described in the Miller offer were previously embraced in oil and gas lease Los Angeles 056356 which was relinquished by Natalie Z. Shell, and the relinquishment was noted on the tract books of the Land Office on August 9, 1956.

The Department has held that immediately upon notation of a relinquishment in the appropriate tract book record of the land office, the relinquished lands become available for further leasing, unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. M.A. Machris, et al., 63 I.D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Cf. Frederick D. Anderson, A-26911 (July 28, 1954) and see Duncan Miller, A-27649, etc. (Aug. 6, 1958).

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955). A lease having been issued to the senior applicant, who was determined to be entitled to the issuance of a lease pursuant to his prior filed offer, the Miller offer was properly rejected for the same land.

Accordingly, the Manager's decision is affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulation in 43 CFR Part 221, as amended. Enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

Mr. James P. Witmer
257 S. Spring Street
Los Angeles 12, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. James P. Witmer (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
W.J.

appeal to Sec
affirmed A-27949 6/15/59

In reply refer to:
Sacramento 054560
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 10, 1958

Certified Mail
Return Receipt Requested

DECISION

Allan A. Stramler, Jr. : Oil and Gas

Manager's Decision Affirmed

Mr. Stramler has appealed from a Land Office decision rejecting his above-noted noncompetitive oil and gas lease offer filed August 30, 1957, under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The decision held some of the lands applied for were embraced in outstanding oil and gas lease Sacramento 052929, which was issued as of June 1, 1957; some (lots 7 and 10 sec. 8, T. 30 S., R. 21 E., M.D.M.,) are within an undefined known geologic structure, effective prior to the date of filing of offer Sacramento 054560, and consequently they are not available for leasing noncompetitively, and the remaining lands applied for were patented without reservation of minerals to the United States.

The appellant contends that the lands embraced in oil and gas lease Sacramento 052929 are known oil bearing lands and should have been offered for competitive bidding. He states that if lots 7 and 10 sec. 8, T. 30 S., R. 21 E., M.D.M., are on a known geologic structure, then the adjoining lot 6 (under lease 052929) should be included with lots 7 and 10 for competitive bidding, because the directional trend of the Belgian Anticline Field is such that it continues through lot 6.

The Geologic Survey reported on October 15, 1956, pursuant to oil and gas lease offer, Sacramento 052929, that the lot 6 and the other lands which have been leased under 052929, are not within an undefined known geologic structure of a producing oil or gas field.

Departmental regulation 43 CFR 192.6 places the duty of determining the boundaries of known geologic structures of oil and gas fields upon the Director of the Geological Survey. The Department has held that the Geological Survey's definition of a producing oil or gas field will not be disturbed in the absence of a clear showing that the definition was improperly made. Lillie Mae Yates, A-26271 (February 8, 1952). It does not appear from the evidence available that a clear showing has been made that the Geological Survey's determination with respect to the lands involved as within or without the boundaries of a known geological structure of a producing oil or gas field as of the time the several offers were filed, was erroneous and improperly made. Under the circumstances there does not appear to be any substantial basis for changing the Manager's decision on this issue. Stanolind Oil and Gas Company, A-27326 (July 12, 1956).

The decision appealed from is affirmed.

Allan A. Stramler, Jr., is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Allan A. Stramler, Jr., then the adverse party to be served is:

Tidewater Oil Company
79 New Montgomery Street
San Francisco 20, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Allan A. Stramler, Jr., (Certified Mail)
Tidewater Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

OIL AND GAS * 10 Lease Offers.

An oil and gas lease offer for less than 640 acres is properly rejected where the land is not entirely surrounded by land not available for leasing and is not included in a unit plan.

Darrell G. Lee, Los Angeles [illegible] (January 16, 1959) that a clear showing has been made that the Geological Survey's determination with respect to the lease involved [illegible] of the boundaries of a known geological structure of a producing oil or gas field as of the date the general offers were filed, was arbitrary and inappropriate. Under the circumstances, there does not appear to be any substantial basis for changing the [illegible] this record. [illegible] Oil and Gas Company, [illegible]

The decision [illegible] is affirmed.

Allen A. [illegible], Jr., is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. (See enclosed Form 4-1364). In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Allen A. [illegible], Jr., then the adverse party to be served is:

[illegible] Oil Company
[illegible]
San Francisco [illegible], California

Manager

Enclosure

DISTRIBUTION

Mr. Allen A. [illegible], Jr. (Certified Mail)
[illegible] Oil Company (Regular Mail)
[illegible] (2)
Geological Survey (2)
Appeals File No. [illegible]
DO

LU(Sec)

OIL AND GAS * 10 Lease Offers

An oil and gas lease offer for less than 640 acres is properly rejected where the land is not entirely surrounded by land not available for leasing and is not included in a unit plan.

Darrel G. Lee, Los Angeles 0150852 (January 16, 1959)

LO

In reply refer to:

Los Angeles 0150852
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 16, 1959

Certified Mail
Return Receipt Requested

DECISION

Darrel G. Lee : Oil and Gas
:
:

Manager's Decision Affirmed

Mr. Lee has appealed from a decision of the Manager dated February 19, 1958, which rejected his above-noted noncompetitive oil and gas lease offer filed May 10, 1957, under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226) because it described less than 640 acres of land not included in a unit plan and not entirely surrounded by land not available for leasing. See Item 9 of the General Instructions on the back of the lease form No. 4-1158, and 43 CFR 192.42(d)(2).

The appellant states "I received a rejected form nine months after I paid my taxes on above property. I would like to continue my lease on the above property."

Regardless of any prior lease which the appellant may have had of the land in question (the record does not show he was lessee of the land), the lease offer here involved did not comply with the mandatory provisions of the regulation referred to above, and the offer was properly rejected. The record shows adjoining lands to those applied for were available for oil and gas filing at the time the lease offer 0150852 was filed.

A regulation which requires that, with certain exceptions, an offer for a noncompetitive oil and gas lease under the Mineral Leasing Act must include 640 acres of land is a reasonable exercise of the discretion vested in the Secretary of the Interior by the Mineral Leasing Act, and an offer which includes less than 640 acres and does not come within the exceptions is properly rejected. Annie Dell Wheatley, The Superior Oil Company Intervener, 62 I.D. 292 (1955).

The Manager's decision is affirmed.

Mr. Lee is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Darrel G. Lee (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

47754

OIL AND GAS * 9 Lands Subject to Leasing
* 7 Withdrawals

An oil and gas lease offer for land patented without a reservation of oil and gas deposits to the United States must be rejected.

An application for withdrawal or reservation from oil and gas leasing temporarily segregates the land from oil and gas leasing and, until final action is taken on the withdrawal application, oil and gas lease offers for lands included therein must be suspended.

An oil and gas lease offer for lands which are withdrawn from all forms of appropriation including mineral leasing must be rejected.

Where an application for a noncompetitive oil and gas lease was partially rejected because part of the land applied for was included within unpatented entries which were not impressed with a reservation of oil and gas to the United States and the land was determined not to be prospectively valuable for oil and gas, the application will be reconsidered where subsequent to the rejection and during the pendency of an appeal on the rejection, Geological Survey determines that the land is prospectively valuable for oil and gas.

Patricia W. Robinson, et al., Los Angeles 0137097 etc. (January 23, 1959)

In reply refer to:
Los Angeles 0137097
0137115
0137139
0137142
0137202
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 23, 1959

Certified Mail
Return Receipt Requested

DECISION

Patricia W. Robinson :
Hampton C. Robinson, Jr. : Oil and Gas
Earl Hightower :

Decisions Vacated in Part
Case Remanded

The above-named parties appealed from separate decisions of the Manager, dated March 26, April 3, April 5 and May 22, 1957, respectively, which rejected all or part of the above captioned oil and gas lease offers for one or more reasons that some of the lands were withdrawn for use of the Navy Department as an anti-aircraft firing range; that some of the lands embraced in public sale applications, desert land entries and state exchange applications were reported not prospectively valuable for oil and gas; and that some of the lands were patented without reservation of minerals to the United States. Further, lease offer Los Angeles 0137142 was suspended as to tracts of land which were embraced in an application for withdrawal by the Navy Department for use as an aerial gunnery and training range.

The facts of the case as disclosed by the record were set forth in the Manager's decisions. In their respective appeals the appellants state that the lands have prospective value for oil and gas and substantiated their contentions with a geologic report by Fay L. Wright, consulting geologist.

As to those lands withdrawn for the use of the Navy Department, Public Land Order No. 281, dated June 6, 1945, (10 F.R. 6786) withdrew the lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws and reserved them for the use of the Navy Department for aviation purposes. Since the lands were specifically withdrawn from mineral leasing, the decisions of the Manager rejecting lease offers for those lands was correct.

Concerning lands embraced in an application for withdrawal by the Navy Department for use as an aerial gunnery and training range the Departmental regulations (43 CFR 295.11 (formerly 295.10)) provide that the recording in the serial register and noting on the official plats and in the tract books of an application for withdrawal or reservation of public lands temporarily segregates such lands from disposal under the public land laws including the mining and mineral leasing laws to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal, to extent that action on all prior applications, the allowance of which is discretionary and subsequent applications respecting such lands will be suspended until final action has been taken on the application for withdrawal or reservation.

In view thereof, the action of the Manager in placing the lease offer 0137142 in suspense as to the lands in the proposed withdrawal was correct.

In regard to those lands which were patented without reservation of oil and gas to the United States, the Bureau is without authority to issue an oil and gas lease as only minerals owned by the United States are subject to leasing under the Mineral Leasing Act (30 U.S.C. 1952 ed., sec. 181). The decisions of the Manager in this respect are correct.

As to those lands embraced in public sale applications, desert land entries and state exchange applications, the rejection of the offers was based on Departmental regulation 43 CFR 192.71, which provides in pertinent part that:

> "(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. * * *"

A public sale application and a State exchange application are not properly termed "entries" within the meaning of 43 CFR 192.71 as stated in the Manager's decisions. However, it has been held that oil and gas lease offers for lands embraced in public sale applications and state exchange applications without reservation of minerals will be rejected where the lands are classified as not prospectively valuable for oil and gas. See 30 U.S.C., 1952 ed., sec. 226

Subsequent to the filing of the appeal, the Geological Survey in a memorandum, dated June 24, 1958, states that under current classification standards the lands involved are now classified as being prospectively valuable for oil and gas.

The Department has held that where an application for a noncompetitive oil and gas lease was partially rejected because part of the land applied for was included within unpatented entries which were not impressed with a reservation of oil and gas to the United States and the land was determined not to be prospectively valuable for oil and gas, the application will be reconsidered where subsequent to the rejection and during the pendancy of an appeal on the rejection, it is determined by the Geological Survey that the land is prospectively valuable for oil and gas. Edward R. Coney, A-27575 (June 23, 1958). The applications will also be reconsidered in the case of those lands embraced in public sale applications and State Exchange applications.

As a consequence, the Manager's decisions as to lands embraced in public sale applications, desert land entries and state exchange applications are vacated. When this decision becomes final the case records will be remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for any action deemed necessary consistent with this decision.

It is to be noted that oil and gas lease offer Los Angeles 0137115 included less than 640 acres of land available for leasing. The records show, however, that the available land comprises an isolated tract and comes within the exception to 43 CFR 192.42(d).

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hightower, Gregg & Garland, Attorneys for Appellants (Certified Mail)
Mrs. Patricia W. Robinson (Regular Mail)
Mr. Earl Hightower (Regular Mail)
Mr. Hampton C. Robinson, Jr. (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (15)
Appeals List No. 1
WJ

OIL AND GAS * 9 Lands Subject to Leasing

Lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for leasing, and applications filed for such lands must be rejected.

Lester C. Hotchkiss et al., Sacramento 055305
(February 24, 1959)

49261

In reply refer to:

Sacramento 055305
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 24, 1959

Certified Mail
Return Receipt Requested

DECISION

Lester C. Hotchkiss : Oil and Gas
Alpha L. Hotchkiss :
:

Decision Affirmed

Lester C. and Alpha L. Hotchkiss have appealed from a decision of the Manager, dated September 3, 1958, rejecting their above-noted oil and gas lease offer, submitted under the provisions of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). The offer, filed February 3, 1958, was rejected on the ground that the land applied for is embraced in outstanding noncompetitive oil and gas leases Sacramento 038241, 038241-A, 038241-B, and 038241-C, which have been extended to January 31, 1960, and so long thereafter as oil or gas is produced in paying quantities, pursuant to the regulations in 43 CFR 192.144(b).

The appellants contend that a partial assignment, filed during the last month of the lease term, cannot become effective to segregate the lease and to entitle the segregated portions to any extension according to the decision of the Department in Franco Western Oil Co., et al., 65 I.D. 316 (1958).

The records disclose that Sacramento 038241 was issued effective February 1, 1948, for a five-year term. It was extended for an additional five-year term through January 31, 1958. A partial assignment from the record titleholder, Charles C. Reed, to The Texas Company was approved effective February 1, 1956. The portion assigned was given serial number Sacramento 038241-A. Effective December 1, 1956, the Manager approved the assignment of Sacramento 038241-A from The Texas Company back to Charles C. Reed. On January 30, 1958, within the five-year extended term, Mr. Reed assigned portions of both Sacramento 038241 and 038241-A to William F. Daggett, Jr. These partial assignments were approved by the Manager on August 29, 1958,* and were given serial numbers Sacramento 038241-B and Sacramento 038241-C, respectively.

---

*Effective February 1, 1958.

The Department has held that for leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one month remaining in the term of the lease. Thus, a partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension. Franco Western Oil Co., et al., 65 I.D. 316 (1958). However, subsequent to the decision in the Franco Western case, the Department, in a Supplemental Decision to this case, dated September 30, 1958, held that those leases which were, prior to August 11, 1958, extended for a further 2-year period and so long thereafter as oil or gas is produced in paying quantities on the basis of assignments filed during the 12th month of the 10th year of the leases will be considered as having been properly so extended, all else being regular. Franco Western Oil Co., et al 65 I.D. 427 (1958).The effect of this decision is that partial assignments of leases filed in the 12th month of the 10th year on or before August 29, 1958, are recognized if otherwise proper.

The lease offer of the appellants being filed at a time when the land was still embraced in outstanding leases, it was properly rejected by the Manager. Lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for leasing, and application filed for such lands must be rejected. Joyce A. Cabot et al., 63 I.D. 122 (1956).

Accordingly, the decision of the Manager is affirmed.

Lester C. and Alpha L. Hotchkiss are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse parties, Charles C. Reed and William F. Daggett, Jr., are to be served through their attorneys, Gilmore and Gilmore, 301 Crocker Anglo Bank Building, 1007 7th Street, Sacramento 14, California.

Edward Woozley
Director

Enclosure

DISTRIBUTION:
Gilmore & Gilmore, Attorneys at Law (Certified Mail)
Lester C. Hotchkiss (Regular Mail)
Roscoe R. Hess, Attorney at Law (Regular Mail)
Charles C. Reed (Regular Mail)
William F. Daggett, Jr. (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
LS

10-12-59

appeal to Sec
affirmed A-28057

(Sec)

OIL AND GAS * 9 Lands Subject to Leasing

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land.

Lands relinquished out of a prior lease were available for leasing immediately after notation of the relinquishment upon the appropriate tractbook, under regulations in effect when the subsequent lease offers were filed.

Where an oil and gas lease was issued properly on lands embraced in a patent with reservation of oil and gas to the United States, it was error to require a junior applicant to post a $1,000 bond in connection with his offer to lease the same lands since this offer was subject to rejection.

Duncan Miller, Los Angeles 0144644
(March 10, 1959)

In reply refer to:

Los Angeles 0144644
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 10, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	:	Oil and Gas
	:	
	:	

Manager's Decision Reversed

Mr. Duncan Miller appealed from the Manager's decision dated November 25, 1957, which required him to furnish a bond in the sum of $1,000.00, in connection with his lease offer, pursuant to 43 CFR 192.100(b), since the lands applied for are patented with a reservation of the oil and gas deposits to the United States under the Act of July 17, 1914 (30 U.S.C., 1952 ed., sec. 121).

In his appeal, Mr. Miller states that a lease was issued for the same land pursuant to an improperly filed lease offer, and that the lease should be cancelled before he should be required to furnish the bond.

The records show that noncompetitive oil and gas lease Los Angeles 0137667 was issued for the land in question, effective as of May 1, 1957, for a period of five years and so long thereafter as oil or gas is produced in paying quantities, pursuant to an offer filed January 12, 1956, at 9:41 A.M. A previous lease of the same lands, Los Angeles 060975, was cancelled upon relinquishment, effective January 9, 1956, and the Land Office tract books were noted as to some of the lands on January 12, 1956, at 9:22 A.M., and as to the balance, on January 12, 1956, at 9:28 A.M. Mr. Miller's offer, Los Angeles 0144644, was filed October 8, 1956. The records further show that the lands involved are embraced in homestead patent No. 830015, issued October 28, 1921, with reservation of the oil and gas deposits therein to the United States under the Act of July 17, 1914, supra.

It was provided in 43 CFR 192.43, in effect at the time of filing of the lease offers here concerned in pertinent part as follows:

> "Where the lands embraced in a relinquished * * * noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the * * * relinquishment on the tractbook * * * of the appropriate land office." 1/

The Department has held, in the case of M. A. Machris, et al., 63 I.D. 161 (June 11, 1956), that the plain and unambiguous language of the regulation provided that land in a relinquished lease became available for the filing of lease offers when, and only when, the relinquishment was noted on the tractbook.

The lands being subject to leasing, the first person to apply for the lease after the relinquishment of the prior lease was noted on the tractbook, if otherwise qualified to hold a lease, had a statutory preference right to a lease of the lands. C. T. Hegwer et al., 62 I.D. 77 (1955).

The record disclosing that lease Los Angeles 0137667 was issued properly, pursuant to a prior, valid offer, the Manager should have rejected the Miller offer. It was error for the Manager to require Mr. Miller to furnish a bond in connection with his offer. Accordingly, the Manager's decision is reversed, and the Miller offer is hereby rejected.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller then the adverse party to be served is Intex Oil Company, P. O. Box 1411, Bakersfield, California.

Earl J. Thomas

Acting Director

Enclosure

DISTRIBUTION
Mr. Duncan Miller (Certified Mail)
Intex Oil Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

1/ This regulationwas amended on August 29, 1957 (22 F.R. 6967) to make lands available for filing of new lease offers without the requirement of notation of the relinquishment (or cancellation) of the previous lease on the official tractbook records of the appropriate land office, where prior to such notati the lease term would have expired in the absence of the relinquishment (or cancellation) of the prior lease.

OIL AND GAS * 9 Lands Subject to Leasing

* 10 Lease Offers

It is proper to reject offers for oil and gas leases for lands which the Secretary of the Interior, in his discretion under the Mineral Leasing Act, as amended, has determined to have no value for oil and gas. If, however, before action on appeal, the Secretary's policy is changed, favoring leasing, the Manager's decisions will be reversed and the cases remanded for issuance of leases, all else being regular.

Edward A. Buse et al., Los Angeles 0150126, etc.
(March 13, 1959)

In reply refer to:

Los Angeles 0150126
0150659
0150189
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 13, 1959

DECISION

Edward A. Buse :
Donald B. Hichborn and : Oil and Gas
Hal D. Hichborn :
Margaret Taylor Taras

Manager's Decisions Reversed

The above-named individuals have appealed from decisions of the Manager, dated January 14, 1958, rejecting the above-identified oil and gas lease offers because the lands applied for, situate in the Ivanpah Valley, are not considered as valuable for oil and gas prospecting. The Manager stated that this determination was contained in a memorandum of instructions by the Assistant Secretary of the Interior, dated April 18, 1942, to the Commissioner, General Land Office (now Bureau of Land Management), opposing issuance of leases for oil and gas purposes in the Ivanpah Valley, pursuant to reports of the Geological Survey that the lands would not reasonably be considered as valuable for oil and gas; and, that, in May, 1956, the Geological Survey reported that the situation remained unchanged and that no justification existed for modifying the restriction against leasing.

In their respective appeals, the appellants, in effect, state that the lands in question are capable of production of oil and gas, and this belief is based upon reports of geologists who tested samples of oil and gas taken from a well drilled in the area in 1941. No geologic reports were submitted with the appeals.

The Director, Geological Survey, by supplemental report dated January 20, 1959, indicated concurrence by the Survey in a new departmental policy favorable to leasing as shown by their memorandum to the Solicitor dated July 11, 1958, which is as follows:

> "At the conference held in the office of Assistant Secretary Ernst with members of your staff, Bureau of Land Management, Geological Survey, and Assistant Secretary Hardy, it seemed to be the general opinion that the prohibition against issuance of leases should be reconsidered in the light of new development and the Geological Survey's new classification standard adopted as of April 22, 1957, wherein sedimentary basins are considered subject to oil and gas leasing. We still believe that the chances for oil and gas are limited; nevertheless, the Ivanpah Valley is a sedimentary basin and if the Department decided as a matter of policy that, notwithstanding the unfavorable results of prospecting, the area should now be opened to leasing, the Survey has no reason to object."

In view of the foregoing, the Manager's decisions are reversed. The case files are herewith remanded for issuance of leases for the areas applied for, all else being regular.

Edward Woozley
Director

DISTRIBUTION:
Mr. Edward A. Buse (Regular Mail)
Mr. Donald B. Hichborn (Regular Mail)
Mr. Hal D. Hichborn (Regular Mail)
Mrs. Margaret Taylor Taras (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (12)
Appeals List No. 1
WJ

appeal to Sec
Dismissed A-28118a-5-23-60
affirmed A-28118-9-2-60
LD(Sec)

OIL AND GAS * 9 Lands Subject to Leasing

It is within the discretion of the Secretary (or his delegatee) to refuse leasing of lands for oil and gas purposes where it is determined that such leasing would not be in the public interest.

Max P. Reidenbach et al., Los Angeles 0154512, etc.
(April 3, 1959)
mer

LO

In reply refer to:

Los Angeles 0154512
0154515
0154516
0154517
0154600
0154601
0154635
0154636
0154637
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 3, 1959

Certified Mail
Return Receipt Requested

DECISION

Max P. Reidenbach et al. 1/ : Oil and Gas

Decisions Affirmed as to Some Lease Offers and Modified and Reversed as to Others

Mr. Reidenbach, et al., have appealed from Acting Manager's decisions rejecting the above-enumerated noncompetitive oil and gas lease offers under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), for lands located in the California-Arizona Maneuver Area, used as artillery ranges by the Army during World War II. The decisions stated as to these lands the Corps of Engineers had inspected the lands and reported they possibly contain unexploded mines, bombs, shells and other missiles which might constitute a hazard to life, limb and property if operations were to be conducted as authorized by an oil and gas lease; consequently, the offers were rejected as not being in the public interest.

The appellants contend the area is safe, having been cleared of duds to a depth of approximately 10 inches, that an oil and gas pipeline was recently completed through the immediate area, Army Engineer demolition experts working with the contractor for purposes of safety, and that similar arrangements could be made for oil and gas exploration, the lessee to bear the cost if necessary. The appellants state further that they will stipulate to assuming responsibility for possible liability caused by accidents resulting from detonation of undetected missiles.

1/ The appellants and the serial numbers of their lease offers are listed in the "Distribution" on page 3 hereof.

The Acting Manager's decisions correctly reflect the status of the lands in issue as to all offers except Los Angeles 0154516 and 0154517. The records show sec. 28, T. 11 N., R. 19 E., S.B.M., a portion of the lands applied for under offer Los Angeles 0154516, and all of the lands applied for under offer Los Angeles 0154517, are outside the California-Arizona Maneuver Area referred to above.

In a letter dated August 26, 1958 (file #1906942), from the Assistant Secretary of the Interior to the Secretary of the Army, it is stated that before the Interior Department can assume full jurisdiction of the lands, further efforts to decontaminate certain areas appear to be in order. These areas are shown in red on U.S. Army Corps of Engineers' Map identified as "California-Arizona Maneuver Area Dedudding Program" Drawing 16-13-01, dated October 1951, and, with exceptions of the lands above referred to in lease offers Los Angeles 0154516 and 0154517, all of the lands involved in the appeals are in the contaminated areas. In the circumstances it appears the offers were properly rejected, under the discretionary power of the Secretary (or his delegatee), on the basis that it is not in the public interest to lease the lands for oil and gas purposes. 30 U.S.C., 1952 ed., sec. 226; *United States ex rel. Jordan v. Ickes,* 143 F. 2d 152 (App. D.C. 1944), *cert. den.* 323 U.S. 759.

The Acting Manager's decisions are affirmed as to all lease offers except Los Angeles 0154516 and 0154517; as to Los Angeles 0154516, the Acting Manager's decision is modified to reverse his ruling rejecting the offer as to sec. 28, above described, and as to Los Angeles 0154517, the Acting Manager's decision is reversed. The case record pertaining to offer Los Angeles 0154517 is being remanded for further appropriate consideration, and the record relating to offer Los Angeles 0154516 will be remanded when this decision becomes final.

The offerors under each offer except Los Angeles 0154517 are each allowed the right of appeal to the Secretary of the Interior in accordance with regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley

Director

Enclosure

Distribution on page 3

DISTRIBUTION:

Mr. Max P. Reidenbach (Certified Mail)
Mr. Stanford L. Neal (Certified Mail)
Mrs. Linnie M. Neal (Certified Mail)
Mr. Everett E. Landon (Certified Mail)
Mr. Harry D. Deputy, Jr. (Certified Mail)
Stuart R. Lundy and Gladys I. Lundy (Certified Mail)
Mr. Carl C. Levingston and Mrs. Marth M. Levingston (Certified Mail)
Messrs. Stanford L. Neal and Howard W. Niel (Certified Mail)
Mrs. Georgia F. Skelton (Certified Mail)
Messrs. Stanford L. Neal and William C. Comstock (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (27)
Appeals List No. 1
EG

appeal to Sec. 10-30-59
affirmed A-28114

LO(Sac)

OIL AND GAS * 9 Lands Subject to Leasing

* 19 Priority of Offer

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the lands.

Lands relinquished out of a prior lease become available for leasing immediately upon notation of the relinquishment upon the appropriate tract book. The regulations do not prohibit a lessee who relinquishes his lease from filing a new oil and gas lease offer for the relinquished land as soon as the land becomes open to the filing of new lease offers.

Duncan Miller, Los Angeles 0154772
(April 3, 1959)

LO

In reply refer to:
Los Angeles 0154772
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

April 3, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller	:	Oil and Gas

Manager's Decision Affirmed

Mr. Duncan Miller appealed from a decision of the Manager dated September 29, 1958, rejecting his oil and gas lease offer, filed February 3, 1958, for the reason that the land applied for is embraced in oil and gas lease Los Angeles 0154602 issued September 1, 1958 to William R. Hulsey, pursuant to his offer filed January 23, 1958.

In his appeal Mr. Miller states that the lands were embraced in a former lease due to expire in a week, at the end of its tenth year, when it was relinquished. He queries whether the filing of a new offer for the identical lands relinquished was proper and thus whether the offer pursuant to which the present lease was issued was valid and entitled to priority over his offer filed February 3, 1958.

The records show that the lands described in the Miller offer were previously embraced in oil and gas lease Los Angeles 064766 which was relinquished on January 22, 1958; the relinquishment was noted on the tract books of the Land Office on January 23, 1958 at 8:53 A.M. Lease offer Los Angeles 0154602 was filed at 10:00 A.M. on that day, as noted above. There is nothing in the record on appeal to show that the offeror was the previous lessee of the same lands; however, whether or not he was the previous lessee is immaterial, as shown below.

The Department has held that immediately upon notation of a relinquishment in the appropriate tract book record of the Land Office, the relinquished lands become available for further leasing, unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing. M. A. Machris, et al., 63 I.D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas leasing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. Cf. Frederick D. Anderson, A-26911 (July 28, 1954); Duncan Miller, A-27649, etc. (August 6, 1958).

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored. C. T. Hegwer, et al., 62 I.D. 77 (1955). A lease having issued to the senior applicant, who was determined to be entitled to the issuance of a lease pursuant to his prior filed offer, the Miller offer was properly rejected for the same land.

Accordingly, the Manager's decision is affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse parties to be served are:

William R. Hulsy, 1218 Chester Avenue, Bakersfield, California

Soter M. Losis, 4509 Shattuck Avenue, Oakland, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. William R. Hulsy (Regular Mail)
Mr. Soter M. Losis (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

LO(lac)

OIL AND GAS * 9 Lands Subject to Leasing

Lands included within outstanding oil and gas leases are not available for leasing, and an application filed for such lands must be rejected.

Betty Glassburn, Sacramento 055758 (April 15, 1959)

In reply refer to:

Sacramento 055758
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 15, 1959

Certified Mail
Return Receipt Requested

DECISION

Betty Glassburn : Oil and Gas

Decision Affirmed

Betty Glassburn has appealed from a decision of the Manager dated September 8, 1958, rejecting her above-noted noncompetitive oil and gas lease offer, 1/ filed May 1, 1958, for conflict with outstanding oil and gas leases Sacramento 037552, 037552-A, 037552-B, 037552-C, 037552-D, 037552-E and 055604. The Manager held that Sacramento 037552, 037552-A, 037552-B, 037552-C, 037552-D, an 037552-E were extended for two years after April 30, 1958, pursuant to the provisions of 43 CFR 192.144(a), and that Sacramento 055604 was issued effective May 1, 1958, pursuant to an offer filed March 25, 1958.

The appellant contends that oil and gas in paying quantities was not discovered on any of the lands in oil and gas leases Sacramento 037552, 037552-A 037552-B, 037552-C, 037552-D, and 037552-E. The appellant asserts that the only oil pumped from the alleged producing well was some that was dumped into the well during the night.

The records reveal that lease Sacramento 037552 was issued effective May 1, 1948, for a five-year term, and was extended for five years, effective May 1, 1953. Leases Sacramento 037552-A and 037552-B were created by partial assignments of Sacramento 037552, approved effective September 1, 1955. Production was obtained on lands included in Sacramento 037552-A on April 30, 1958, according to a report from the Geological Survey, dated March 20, 1959. A partial assignment of Sacramento 037552-A, approved effective May 1, 1958, created lease Sacramento 037552-C (within which lease the producing lands are situated. Lease Sacramento 037552-C shall continue for as long as production

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1/ Submitted under the provisions of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226).

is had in paying quantities. Sacramento 037552-A was extended for two years from the effective date of the partial assignment. Leases Sacramento 037552 and 037552-B were continued for two years, effective April 30, 1958, the date of discovery on what was then 037552-A, under the provisions of 30 U.S.C. sec. 187a and the regulations in 43 CFR 192.144(a). Leases Sacramento 037552-D and 037552-E, created by partial assignments of 037552 and 037552-B, respectively, approved effective July 1, 1958, and leases Sacramento 037552 and 037552-B were extended for two years from the date of the partial assignments under 30 U.S.C. sec. 187a.

The appellant's lease offer was properly rejected. Lands included within outstanding oil and gas leases are not available for leasing, and an application filed for such lands must be rejected. *Joyce A. Cabot et al.*, 63 I.D. 122 (1956); *Margaret A. Andrews et al.*, 64 I.D. 9 (1957).

The decision of the Manager is affirmed.

Miss Glassburn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse parties to be served are:

Chris A. Kufis, E. A. Fritz,
and M. L. Mitchell
914 M Street
Fresno, California

Iener W. Nielsen
511 T. W. Patterson Bldg.
Fresno 21, California

Mikio Uchiyama
6247 South Leonard Avenue
Fowler, California

Jos. R. Neaves, Jr., dba
Neaves Developments
239 South Beverly Drive
Beverly Hills, California

James P. Witmer
257 South Spring Street
Los Angeles 12, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:
Orris R. Hedges, Attorney at Law (Certified Mail)
Betty Glassburn (Regular Mail)
Gilmore and Gilmore, Attorneys at Law (Regular Mail)
Chris Kufis, E. A. Fritz, and M. L. Mitchell (Regular Mail)
Iener W. Nielsen (Regular Mail); Mikio Uchiyama (Regular Mail)
Jos. R. Neaves, Jr., dba Neaves Developments (Regular Mail)
James P. Witmer (Regular Mail)
Minerals Staff Officer (5); Geological Survey (3);
Appeals List No. 1
LS 52694

LO(Sac)

OIL AND GAS * 9 Lands Subject to Leasing

CLASSIFICATION * 4 Lands Available for Leasing (Sodium)

A sodium prospecting permit application for lands included within a desert land entry not impressed with a sodium reservation is properly rejected where the lands are found to be not prospectively valuable for sodium. The findings of the Geological Survey that the lands are not prospectively valuable, in the absence of evidence to the contrary, is binding upon the Bureau of Land Management.

Martha Cockburn, Los Angeles 0146582
(May 11, 1959)

In reply refer to:

Los Angeles 0146582
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 11, 1959

Certified Mail
Return Receipt Requested

DECISION

Martha Cockburn : Sodium Prospecting Permit
:
:

Decision Affirmed

Martha Cockburn has appealed from the Manager's decision dated May 29, 1958 rejecting her application for a sodium prospecting permit under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., secs. 261-263) because the lands are embraced in desert land entries and a field report from the Geological Survey shows that the lands are not prospectively valuable for sodium.

In her appeal, appellant states that the land has high prospective value for sodium borates and describes certain geological evidence including sodium-calcium borate **ulexite** brought to the surface by ground waters, which she contends, warrants this conclusion.

In a supplemental report dated April 1, 1959 the U.S. Geological Survey states there are no known salt beds in the area and further that the land applied for is approximately four miles northeast of the present lake basin and there are several fresh water wells in the intervening area. They conclude, although there is a slight possibility that buried playa deposits may exist at depth, no information is available to verify an assumption that the sediments in the area of the requested land contain any sodium deposits, therefore, the Survey states, a modification of their previous report is not warranted.

A mineral prospecting permit embracing lands included in outstanding desert land entries cannot be granted, unless the entries were impressed with mineral reservations. See, Bertram N. Beal, 51 L.D. 162 (1925). 30 U.S.C., Sec. 121-124 provides for the reservation of Sodium in desert land entries; however an entryman cannot be required to consent to such a reservation where the land is determined to be not prospectively valuable for sodium. The Geological Survey having considered all the evidence submitted by appellant has reported that the lands are not prospectively valuable for sodium; therefore, it is necessary to reject the mineral prospecting permit application. Cf. Irma Gregg, A-27344 (August 9, 1956) and Bertram N. Beal, supra.

Therefore, the Manager's decision rejecting the application for land within outstanding unpatented entries not impressed with a sodium reservation was proper and is hereby affirmed.

Martha Cockburn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse parties to be served are:

John F. Brundage
2137 Grand View Drive
Camarillo, California

O'Henry Hilley
Camarillo, California

James W. Rolls
217 Collins Street
Oxnard, California

Clinton C. Douglas, Jr.
231-21st Street
Bakersfield, California

Director

Enclosure

DISTRIBUTION:
Mr. F. V. Lopardo, Attorney at Law (Certified Mail)
Martha Cockburn, (Regular Mail)
Advers Parties (Regular Mail)
Mineral Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

LQ(Sc)

OIL AND GAS * 16 Termination
* 19 Priority of Offer

Upon failure of a lessee to file a timely application for extension of a noncompetitive oil and gas lease (involving lands not within the known geologic structure of a producing oil or gas field and not otherwise withdrawn from leasing on the last day of the primary term of the lease), the lease will expire at the end of its primary term without notice to the lessee. The lands thereupon become subject to the filing of new lease offers, and the first qualified applicant therefor has a statutory preference right to a lease, if a lease is to be issued for the lands, which must be honored.

Lands embraced in an outstanding oil and gas lease are not available for leasing, and an application filed for such lands must be rejected.

Malick K. Doumani, Los Angeles 0148414
(May 12, 1959)

fo

In reply refer to:

Los Angeles 0148414
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Malick K. Doumani : Oil and Gas

Decision Affirmed

Mr. Malick K. Doumani appealed from the Acting Manager's decision dated May 23, 1958, which rejected his oil and gas lease offer, filed March 12, 1957, under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226) for the reason that a prior application, Los Angeles 0148093, embracing the same lands, was filed on March 1, 1957, by John H. and Emily Palmer, 8911 Dakota Avenue, Garden Grove, California, pursuant to which a lease was issued May 15, 1958, effective June 1, 1958.

Mr. Doumani contends that he held a prior-issued lease embracing the same lands, which he subleased to East Mesa Oil Company, and he was assured that they would renew the lease; however, having been informed too late to file a proper renewal offer, he filed his lease offer at the earliest possible time.

The records disclose lease Los Angeles 091949, which had been held by Mr. Doumani, expired on February 28, 1957, upon expiration of the five-year term for which it was issued. Mr. Doumani filed his lease offer Los Angeles 0148414 for the same lands on March 12, 1957; however, lease offer Los Angeles 0148093 was filed for the same lands on March 1, 1957, pursuant to which a lease issued.

The pertinent regulation 43 CFR 192.120(g) provides that:

> "Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. The lands will thereupon become subject to new filings of offers to lease."

Since no application for extension of the lease had been filed, the lands were immediately available for further leasing upon expiration of lease Los Angeles 091949, the lands not being situated on a known geologic structure of a producing oil or gas field and not being otherwise withdrawn from such leasing. The first qualified applicant, in this case the applicant under Los Angeles 0148093, filed March 1, 1957, was entitled to have his application honored, if a lease was to be issued for the land. C. T. Hegwer et al., 62 I.D. 77 (1955). Lands included within an outstanding oil and gas lease are not available for leasing, and applications for such lands must be rejected. Joyce A. Cabot et al., 63 I.D. 122 (1956).

The decision of the Acting Manager was correct, and it is hereby affirmed.

Mr. Doumani is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

John H. and Emily Palmer
8911 Dakota Avenue
Garden Grove, California

Director

Enclosure

DISTRIBUTION:

Mr. Malick K. Doumani (Certified Mail)
John H. and Emily Palmer (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

54561

10-30-59

appeal to Sec. affirmed A-28164 L (Sol)

OIL AND GAS * 9 Lands Subject to Leasing
* 12 Relinquishments

Lands included within outstanding oil and gas leases are not available for leasing, and an application filed for such lands must be rejected.

A lessee of an oil and gas lease who relinquishes his lease is not thereby disqualified from applying for a new lease of the same lands.

Duncan Miller, Los Angeles 0154773
(May 21, 1959)

In reply refer to:

Los Angeles 0154773
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 21, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from a decision of the Manager, dated October 9, 1958, rejecting in part his above-noted noncompetitive oil and gas lease offer, submitted under the provisions of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226), for conflict with outstanding oil and gas leases, Los Angeles 0147811 and 0147222.

The appellant contends that lease offer Los Angeles 0147222 was not a qualified offer under the provisions of the Mineral Leasing Act because the offeror had held a prior lease for the lands which he relinquished shortly before his lease was to expire with the intent of evading the provisions of the Mineral Leasing Act and obtaining a new lease in a monopolistic way.

The records reveal that the lands embraced in lease offer Los Angeles 0147222 were formerly embraced in oil and gas lease Los Angeles 072453, issued effective July 1, 1948, extended effective July 1, 1953, and relinquished February 5, 1957. A notation of the relinquishment was made on the tract book on February 6, 1957. John B. DeNault, the lessee under lease Los Angeles 072453, filed an application, Los Angeles 0147222, for the relinquished lands on February 7, 1957. A lease for the lands was issued to Mr. DeNault effective February 1, 1958. Mr. Miller filed his application for the lands on February 3, 1958.

The Department has held that a lessee of an oil and gas lease who relinquishes his lease is not thereby disqualified from applying for a new lease of the same lands. Duncan Miller, A-27620 (July 28, 1958).

The appellant's lease offer, filed when the lands applied for were embraced in valid existing leases, was properly rejected in part. Joyce A. Cabot et al., 63 I.D. 122 (1956); Margaret A. Andrews et al., 64 I.D. 9 (1957).

The Manager's decision of October 9, 1958, required the appellant to file a bond under the act of July 17, 1914 (38 Stat. 509, 30 U.S.C. 121-123) for the protection of surface owners of certain lands awarded to the appellant in a drawing.

The appellant asserts that he delayed complying with the bond requirement of the Manager's decision because he believed he was entitled to certain other patented lands, leased under Los Angeles 0147222 to Mr. DeNault.

As indicated above, the appellant was not entitled to lease such lands. The requirement to file within 30 days from notice a bond covering the lands, which were awarded to him in the drawing, was proper. When this decision becomes final, the record will be remanded to the Land Office Manager through the Assistant to the State Supervisor at Los Angeles, California, for further processing of the lands awarded him.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse parties to be served are as follows:

Miss Helen S. Mackie
8230 Beverly Boulevard
Los Angeles 48, California

Mr. John B. DeNault
4680 Wilshire Boulevard
Los Angeles, California

Acting Director

Enclosure

DISTRIBUTION:

SO (Sacramento)
Mr. Duncan Miller (Certified Mail)
Miss Helen S. Mackie (Regular Mail)
Mr. John B. DeNault (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
LS

appeal to Sec
affirmed A-28172 2-11-60

OIL AND GAS * 9 Lands Subject to Leasing

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land; and where a lease has been issued to the senior applicant, who was determined to be entitled to the lease, the junior-filed offer is properly rejected.

Duncan Miller, Los Angeles 0145776
(May 21,1959)

In reply refer to:

Los Angeles 0145776
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 21, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Miller appealed from a decision of the Manager, dated August 4, 1958, rejecting his oil and gas lease offer, filed November 16, 1956, for the reason that the land applied for is embraced in outstanding oil and gas lease Los Angeles 0145402 issued to Isabelle Millen effective as of June 1, 1958, pursuant to her lease offer filed November 1, 1956.

In his appeal, Mr. Miller requests that an examination be made to ascertain whether the offeror under Los Angeles 0145402 was qualified, the appellant suggesting that the offeror may have been acting for a broker at the time of filing the offer in view of the fact that the lands were the subject of a number of offers and an assignment of Los Angeles 0145402 from the lessee to a lease broker was filed.

The records show that a number of offers were filed simultaneously for the lands on November 1, 1956, and a drawing was held, in which Los Angeles 0145402 drew priority. An investigation was made to determine whether any collusion took place as to the simultaneous offers upon a protest by one of the applicants not here involved, and it appears from a report dated January 20, 1958, that there was no evidence of collusion.

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such a lease which must be honored. C. T. Hegwer et al., 62 I.D. 77 (1955). A lease having been issued to the senior applicant, who was determined to be entitled to the issuance of a lease pursuant to her prior-filed offer, the Miller offer was properly rejected for these lands.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Harold L. Rowland
714 West Olympic Blvd.
Los Angeles 15, California

Earl D Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Harold L. Rowland (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

64561

LO(Sec)

OIL AND GAS * 9 Lands Subject to Leasing

Where on appeal the record shows the Bureau of Reclamation is agreeable to leasing for oil and gas purposes (with proper restrictions) lands included in a proposed first form reclamation withdrawal, an offer for such lands which was previously rejected on the basis of an adverse report by the Bureau of Reclamation will be remanded for further appropriate consideration and for lease issuance, all else being regular.

Vito Rotunno, Los Angeles 0152080 (June 1, 1959)

LD

In reply refer to:
Los Angeles 0152080
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

June 1, 1959

Vito Rotunno : Oil and Gas

Decision Reversed; Case Remanded

Mr. Vito Rotunno has appealed from a decision of the Manager, dated May 14, 1958, rejecting his noncompetitive oil and gas lease offer, Los Angeles 0152080, filed pursuant to the Mineral Leasing Act, as amended (30 U.S.C. sec. 181, et seq.). The Manager held that the land described in appellant's offer (N$\frac{1}{2}$SE$\frac{1}{4}$ sec. 32, T. 5 N., R. 23 W., S.B.M., California) is embraced in proposed reclamation withdrawal 0154301, and since the Bureau of Reclamation has advised the Land Office that the lease offer should be denied because the land in question will be a part of the Casitas and Nordoff Reservoirs drainage area, the oil and gas lease offer of the appellant was rejected.

The appellant contends (1) that a priority exists in favor of his lease offer since it was filed prior to the application for reclamation withdrawal; (2) that the Bureau of Reclamation has merely indicated a desire that the land become part of the Casitas and Nordoff Reservoirs drainage area without definitely condemning or taking possession of the property; and (3) that even if the entire area should become part of the aforementioned drainage area, a lease can still be issued subject to certain restrictions as to drilling rights.

The oil and gas lease offer of the appellant was filed on July 19, 1957. The application for proposed first form reclamation withdrawal pursuant to the provisions of section 3, Act of June 17, 1902 (32 Stat. 388), for withdrawal of the land from all forms of appropriation, including mining but not mineral leasing, was filed January 3, 1958, and the land was segregated on the Land Office records effective January 9. The withdrawal application did not segregate the lands from oil and gas leasing. Therefore, the Manager's action in rejecting the appellant's oil and gas lease offer on the basis of a report from the Bureau of Reclamation, objecting to lease isuuance, was correct.

In a supplemental report from the Bureau of Reclamation, dated December 8, 1958, the Commissioner reported that that Bureau has no objection to the issuance of a lease pursuant to the appellant's offer provided it is made subject to the provisions of standard oil and gas lease stipulation Form 4-467(b) and certain additional conditions set out in the report.

Accordingly, the decision of the Manager is reversed and the case will be remanded through the Assistant to the State Supervisor for this Bureau in California, for further consideration and lease issuance in accordance with the conditions specified by the Bureau of Reclamation, all else being regular.

Edward Woozley

Director

DISTRIBUTION:

Ass't to SS (Los Angeles) w/case record
Mr. Vito Rotunno (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
LS

56242

L O(Gac)

OIL AND GAS * 1 Generally

RULES OF PRACTICE * 1 Generally

An appeal will be dismissed where the issue involved has become moot.

The California Company, BLMA 035406
(June 9, 1959)

In reply refer to:
BLM-A 035406
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 9, 1959

Certified Mail
Return Receipt Requested

DECISION

The California Company : Oil and Gas

Appeal Dismissed

The California Company has appealed from a decision of the Chief, Minerals Adjudication Section, Eastern States Land Office, dated June 16, 1958, rejecting its above-noted noncompetitive oil and gas lease offer under the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., secs. 351-359). The decision held that the General Services Administration, the agency having jurisdiction over the lands, has withheld its consent to oil and gas leasing thereof pending their further efforts to sell the lands as excess to the needs of that agency. The lands had been previously offered for sale by competitive bids but were not sold because the bids were inadequate.

By letter dated May 5, 1959, the General Services Administration reported that the lands here involved have been conveyed in fee simple, without mineral reservations, to the appellant herein, as a result of competitive sale and that the Federal Government has no further interest in this property to be disposed of.

Therefore, this appeal is moot, and it is hereby dismissed.

The California Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:
The California Company (Certified Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
EG

56242

Appeal to Sec 10-30-59
affirmed A-28223 L(Sec)

OIL AND GAS * 9 Lands Subject to Leasing

* 12 Relinquishments

* 19 Priority of Offer

Land described in relinquished oil and gas leases became available for filing of lease offers immediately after the relinquishments were noted on the tractbooks, the lands not being situated on a known geologic structure of a producing oil or gas field and not being withdrawn from leasing.

An oil and gas lease offer which is filed for lands included in prior offers should be suspended rather than rejected pending determination of whether any of the prior offerors are entitled to a lease.

Duncan Miller, Los Angeles 0156083 and 0151047
(June 18,1959)

LO

In reply refer to:

Los Angeles 0156083
0151047
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas
:
:

Decisions Affirmed as Modified

Mr. Duncan Miller appealed from separate decisions of the Manager, dated May 14 and 18, 1958, dismissing his protest against issuance of an oil and gas lease under conflicting offer Los Angeles 0149793 and rejecting his above-noted oil and gas lease offers; all of the offers were filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226). Lease offer Los Angeles 0151047 was rejected because of conflict with existing leases issued pursuant to prior-filed offers, while lease offer Los Angeles 0156083 was rejected because of conflict with prior-filed oil and gas lease offer Los Angeles 0149793.

Mr. Miller challenges the validity of the previously-issued leases and the prior-filed lease offer, claiming the offers were invalid. He states it is illegal for the previous lessees to relinquish leases merely to file new offers for the same lands, and he asserts he is the first qualified offeror to lease the lands.

Appendix "A" attached has been prepared to show the pertinent data concerning the time of filing of the appellant's lease offers and that of the prior-filed lease offers or leases, in conflict therewith, as well as the time the respective relinquishments of previous leases of the same lands were noted on the official tractbook records of the land office. It will be seen that the appellant's lease offers were the junior-filed offers having been received subsequent to the offers of the other applicants for the same lands except, however, in the case of 087236 which was an outstanding lease at the time 0151047 was filed.

Section 192.43, in effect at the time the previous leases were terminated, 1/ and at the time the prior, conflicting offers were filed,

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1/ Circular 1904, 20 F. R. 1778, March 24, 1955; amended by Circular 1983, 22 F. R. 6967, August 29, 1957.

provided in material part that immediately upon notation of a relinquishment in the tractbook of the land office, the relinquished lands become available for further leasing unless they were on a known geologic structure of a producing oil or gas field or were withdrawn from leasing. See M. A. Machris, et al., 63 I.D. 161 (1956). There is no provision in the law, or the regulations, prohibiting an offeror from filing for lands which become available for oil and gas filing by reason of relinquishment of a prior lease of the same lands merely because that prior lease was held by him. 2/

The lands being subject to leasing, the first person to apply for a lease of them after the relinquishment of the prior lease was noted on the tractbook, if otherwise qualified to hold a lease, has a statutory preference right to a lease of them. C. T. Hegwer, et al., 62 I.D. 77 (1955).

The Department has held that lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for leasing, and an application filed for such lands must be rejected. Joyce A. Cabot, et al., 63 I.D. 122 (1956). However, an oil and gas lease offer which is filed for lands included in prior offers should be suspended rather than rejected pending determination of whether any of the prior applicants are entitled to a lease. John E. Miles, 62 I.D. 135 (1955).

In view thereof, the decisions of the Manager are correct except as to conflict of offer 0156083 with prior-filed lease offer 0149793. The lease offer on appeal is suspended as to these lands, pending final adjudication of offer 0149793. When this decision becomes final, the case record will be remanded to the Land Office through the Bureau's Assistant to the State Supervisor, Los Angeles, California, for further consideration in accordance with this decision.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

The adverse parties to be served are:

George R. Wickham (L.A. 0149793) 1861 W. Mountain Street Glendale, California	Lysle Snow (L.A. 0146709) 7840 Airlane Avenue Los Angeles 45, California

---

2/ Duncan Miller, A-27620 (July 28, 1958), A-27649 (August 6, 1958).

Mrs. Camille E. Keyes (L.A. 0148358)
1425 Berendo Street 0148359)
Los Angeles 6, California

G. Ezra Jordon (L.A. 087236)
812 Chester Williams Bldg.
215 W. 5th Street
Los Angeles, California

Mrs. Mazie L. Maguire (L.A. 087236)
4102 Country Club Drive
Los Angeles, California

Mrs. Phyllis A. Munson (L.A. 087236)
c/o Newhalem
Rockport, Washington

Charles P. Mead
Acting Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
All of the Adverse Parties (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (6)
Appeals List No. 1
WJ

APPENDIX "A"

Miller's Offers	Conflicting Leases or Lease Offers	Relinquished Leases	Noted on Tractbook
Los Angeles 0151047 filed May 16, 1957	Los Angeles 0146709 issued April 1, 1958, to Lysle Snow pursuant to offer filed at 10:00 A.M., January 21, 1957.	Los Angeles 056716 relinquished January 17, 1957	January 21, 1957 9:46 A.M.
		Los Angeles 056716-A relinquished January 17, 1957	January 21, 1957 9:50 A.M.
		Los Angeles 059624 relinquished January 17, 1957	January 21, 1957 9:41 A.M.
	Los Angeles 087236 issued December 1, 1951 and extended five years from December 1, 1956 Mazie Lorraine Maguire Phillis A. Munson G. Ezra Jordon	No relinquishment involved	
	Los Angeles 0148358 issued March 1, 1958 to Mrs. Camille E. Keys, pursuant to offer filed March 8, 1957, at 10:02 A.M.	Los Angeles 077175 relinquished March 7, 1957	March 8, 1957 9:45 A. M.

Miller's Offers	Conflicting Leases or Lease Offers	Relinquished Leases noted on Tractbook
	Los Angeles 0148359 issued March 1, 1958 to Mrs. Camille E. Keys pursuant to offer filed March 8, 1957, at 10:03 A.M.	Los Angeles 077170 relinquished March 7, 1957 March 8, 1957 9:46 A.M,
Los Angeles 0156083 filed March 19, 1958	Los Angeles 0149793 filed April 10, 1957 at 10:00 A.M. by George R. Wickham	Los Angeles 056704 relinquished April 10, 1957 April 10, 1957 9:30 A.M,

appeal to Sec.
affirmed A-28192 10-20-59 (Sec)

OIL AND GAS * 9 Lands Subject to Leasing

* 12 Relinquishments

* 19 Priority of Offer

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land.

A lessee who relinquishes a lease issued to him, is not disqualified from submitting a new offer for the same land as soon as it becomes available for new lease offers upon the proper notation of the relinquishment on the tract book.

Duncan Miller, Los Angeles 0157659 (June 23, 1959)

In reply refer to:
Los Angeles 0157659
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 23, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from a decision of the Manager dated November 6, 1958, which rejected in part his noncompetitive oil and gas lease offer designated above, and dismissed his protest against the issuance of a lease for the land in question to Mr. Lysle Snow, who had filed a prior valid lease offer therefor, under Los Angeles 0149292. 1/

The appellant contends in substance that Mr. Snow is not a qualified offer or in this case. He bases his contention on the fact that Mr. Snow, who held a prior lease to the land, relinquished it and immediately filed his new offer for the identical land, upon the notation of the relinquishment on the tract book in the Land Office. The appelllant further asserts that the issuance of the lease to Mr. Snow for the disputed land is in direct violation of the regulations, for the reason that the lease should not have been issued until final adjudication of the issues was had in the matter.

The records show that the land in question, and described in the offer filed by Mr. Miller, was previously embraced in oil and gas lease, Los Angeles 073719, issued to Mr. Snow, and relinquished by him on March 27, 1957. The relinquishment of this lease was noted on the tract book at 9:28 a.m., on March 28, 1957. The lease offer, Los Angeles 0149292, was filed at 10:02 a.m. on March 28, 1957. The lease offer, Los Angeles 0157659, filed by Mr. Miller was received in the Land Office at 2:11 p.m. on April 24, 1958, over a year later.

1/ The land in conflict is described as Lot 1, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, Sec. 32, T. 5 N., R. 19 W., S.B.M., California

It has been well established by the Department that immediately upon notation of a relinquishment in the appropriate tract book record of the Land Office, the relinquished lands become available for further leasing, unless they are in a known geological structure of a producing oil or gas field or are withdrawn from mineral leasing. Cf. B. E. Van Arsdale, 62 I. D. 475, 478 (1955); E. A. Vaughey, 63 I. D. 85 (1956); M. A. Machris, et al., 63 I. D. 161 (1956). There is nothing of record to indicate that Mr. Snow was not a qualified offeror. A lessee of an oil and gas lease who relinquishes his lease is not thereby disqualified from applying for a new lease of the same lands. Duncan Miller, A-27649, etc. (August 6, 1958).

As Mr. Snow was the first qualified applicant for theland in question, which according to the pertinent records was available for leasing at the time he filed his offer, he has a statutory preference right to the lease which must be honored. Russell H. Reay, Gertrude H. Lackie, 60 I.D. 29 (1947); C. T. Hegwer et al., 62 I. D. 77 (1955).

Accordingly, the Manager's decision is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, then the adverse party to be served is:

Mr. Lysle Snow
7840 Airlane Avenue
Los Angeles 45, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mr. Lysle Snow (Regular Mail)
Geological Survey (3)
Appeals List No. 1
RBO

56242-59

affirmed A-28224 10-30-59 LA(Sac)

OIL AND GAS * 9 Lands Subject to Leasing

* 12 Relinquishments

* 19 Priority of Offer

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land.

A lessee who relinquishes a lease issued to him, is not disqualified from submitting a new offer for the same land as soon as it becomes available for new lease offers upon the proper notation of the relinquishment on the tract book.

Duncan Miller, Los Angeles 0138362
(June 25, 1959)

In reply refer to:
Los Angeles 0138362
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Mr. Duncan Miller has appealed from the decision of the Manager rejecting his above-identified oil and gas lease offer filed under the Mineral Leasing Act, as amended (30 U. S. C., 1952 ed., Supp. V, sec. 226), insofar as it involved the land embraced in outstanding oil and gas lease, Los Angeles 0137384. The appellant's lease offer was also rejected as to land embraced in other outstanding oil and gas leases. However, appellant did not raise any issue as to this rejection.

The records show that the lease offer Los Angeles 0137384, was filed on December 30, 1955 by Mrs. Jean M. Powell on the same date that a previous lease issued to her was relinquished and cancelled on the records in the Land Office. The conflicting lease offer of the appellant was filed in the Land Office on February 28, 1957.

The appellant contends in substance that Mrs. Powell was not a qualified offeror. He bases his contention on the fact that Mrs. Powell held a prior lease on the land in question, and upon relinquishment thereof, immediately filed her new offer for the identical land. The appellant asserts that the issuance of a lease to Mrs. Powell under such circumstances is a direct contravention of the Mineral Leasing Act.

The appellant has not submitted any persuasive argument or evidence to support his contentions.

It has been well established by the Department that immediately upon the notation of a relinquishment in the appropriate tract book record of the Land Office, the relinquished lands become available for further leasing, unless they are in a known geological structure of a producing oil or gas field or are withdrawn from mineral leasing. Cf. B. E. Van Arsdale, 62 I. D. 475, 478 (1955); E. A. Vaughey, 63 I.D. 85 (1956); M. A. Machris et al., 63 I. D. 161 (1956). There is nothing of record to indicate that Mrs. Powell was not a qualified offeror. A lessee of an oil and gas lease who relinquishes his leases is not thereby disqualified from applying for a new lease of the same lands. Duncan Miller, A-27649 etc., (August 6, 1958).

As Mrs. Powell was the first qualified applicant for the land in question which according to the records was available for leasing at the time she filed her offer, she has a statutory preference right to lease which must be honored. Russell H. Reay, Gertrude H. Lackie, 60 I. D. 29 (1947); C. T. Hegwer et al., 62 I. D. 77 (1955).

Accordingly, the Manager's decision is affirmed.

Mr. Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Mrs. Jean M. Powell
217 Hedden Bldg.
Billings, Montana

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Mrs. Jean M. Powell (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
RBO

LO(Sac)

OIL AND GAS * 4 Assignments and Transfers

Where the department has placed a different interpretation on an act of Congress from that previously adopted, the new interpretation is to be given prospective application only, and actions previously taken on partial assignments of oil and gas leases under the overruled interpretation of the statute will not be disturbed.

Where partial assignments were filed in the 12th month of the tenth year of an undeveloped oil and gas lease during the period prior to August 29, 1958 they effectively extend the lease for two years as provided in 43 CFR 192.144 under the departmental interpretation of the law then in effect.

Signal Oil and Gas Company, et al., Los Angeles 087465
(June 25, 1959)

LO

In reply refer to:
Los Angeles 087465
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1959

DECISION

Signal Oil and Gas Company : Oil and Gas
Al Stevenson :

Manager's Decision Reversed

The above-noted parties have appealed from a decision of the Manager dated September 25, 1958, denying approval of a partial assignment of the above-noted oil and gas lease from Signal Oil and Gas Company, as assignor, to Al Stevenson, as assignee, and holding that the lease terminated by operation of law at the end of its five year extended term, August 31, 1958. The partial assignment was filed in the Land Office on August 21, 1958. The Manager held that a partial assignment filed during the last month of the extended lease term could not become effective to segregate the lease nor entitle the segregated portions to any extension, citing Franco Western Oil Company, et al., 65 I.D. 316 (August 11, 1958).

The record shows the lease was issued effective September 1, 1948, under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V., sec. 226). The lease was extended an additional five years at the end of its primary term, August 31, 1953.

In support of its appeal, appellant states in substance that the Manager erred in holding the case of Franco Western Oil Company, supra. to be applicable herein because said case "gives retroactive effect to said decision"; and "deprives appellants of a vested right which they had under prior decisions".

The syllabus in the above case states:

> "For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease. A partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension. Humble Oil and Refining Company, 64 I.D. 5 (1957), distinquished. Associate Solicitor's Opinion, M-36443 (June 4, 1957), overruled in part."

By a supplemental decision rendered September 30, 1958, Franco Western Oil Company, et al., 65 I.D. 427, the Department held the decision of August 11, 1958, was to be given prospective application only, and that "...partial assignments of leases in the 12th month of their 10th year in August 1958, filed on or before August 29, 1958, will be recognized."

In view thereof the decision of the Manager is reversed. When this decision becomes final, the case will be remanded to the Land Office, through the Bureau's State Supervisor, Los Angeles, California for further consideration consistent with the decision.

Edward Woozley
Director

DISTRIBUTION:

Signal Oil and Gas Company (Regular Mail)
Mr. Al Stevenson (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

LO(Sac)

OIL AND GAS * 8 Extensions
* 9 Lands Subject to Leasing

An oil and gas lease will continue beyond its extended term for so long as oil or gas is produced in paying quantities, and an application filed for lands embraced in the outstanding lease must be rejected. Duncan Miller, Los Angeles 0153448 (July 9, 1959)

RO

In reply refer to:

Los Angeles 0153448
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 9, 1959)

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed as Modified

Mr. Miller appealed from the Manager's decision, dated July 21, 1958, rejecting his above-noted oil and gas lease offer, filed November 1, 1957, for the reason that the offer conflicts with outstanding oil and gas lease Los Angeles 054899 issued November 1, 1947, extended five years from November 1, 1952, and further extended thereafter for so long as oil and gas is produced in paying quantities by reason of completion of a productive well on October 18, 1957.

In his appeal, Mr. Miller states that lease Los Angeles 054899 expired at the end of October 1957 and the only way the lease could be further extended is by production on the leasehold in paying quantities before the expiration of the extended five-year term on October 31, 1957. He contends the fact of completion of a productive well on October 18, 1957, does not necessarily mean production of oil in paying quantities was had on the leasehold on October 31, 1957, and subsequently thereto when his lease offer was filed.

While Mr. Miller is correct in his contention that the well on the leasehold must have been producing oil in paying quantities when the extended term expired in order for the lease to continue beyond that date, the records show the well was producing oil in paying quantities on that date and subsequently thereto and therefore it has continued and will continue for so long as oil or gas is produced in paying quantities. The Manager's decision is modified to state clearly that lease 054899 was continued beyond its extended term by reason of production of oil in paying quantities.

The Department has long followed the rule that offers for oil and gas lease filed for lands included in an outstanding lease must be rejected. See Joyce A. Cabot et al., 63 I.D. 122 (1956); Martin Judge, 49 I.D. 171 (1922). Therefore, the rejection of the offer was correct; the Manager's decision is affirmed, as modified herein.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Intex Oil Company
P. O. Box 1411
Bakersfield, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Intex Oil Company (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
WJ

57714-59

OIL AND GAS * 9 Lands Subject to Leasing

CLASSIFICATION * 4 Lands Available for Leasing (Sodium)

A sodium prospecting permit application for land included within a desert land entry not impressed with a sodium reservation is properly rejected where the land is found to be not prospectively valuable for sodium. The findings of the Geological Survey that the land is not prospectively valuable, in the absence of evidence to the contrary, is binding upon the Bureau of Land Management.

Ned M. Bailey, Los Angeles 0146976

(July 20, 1959)

In reply refer to:
Los Angeles 0146976
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 20, 1959
Ig.

Certified Mail
Return Receipt Requested

DECISION

Ned M. Bailey	:	Sodium Prospecting Permit

Decision Affirmed

Ned M. Bailey has appealed from a decision of the Chief, Minerals Adjudication Unit, which rejected his above-noted application for a sodium prospecting permit filed on February 1, 1957 under section 23 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 261) as to the SW¼ and the N½ sec. 12, T. 32 S., R. 37 E., M.D.M., California, for the reason that the rejected land is embraced in Desert Land Entries Los Angeles 0102773 and 0102775 which were allowed prior to the date the appellant filed his application, and is not subject to a reservation of sodium to the United States under the Act of July 17, 1914, since the Geological Survey has reported that the land is not prospectively valuable for sodium.

The appellant contends that the land is prospectively valuable for sodium compounds and in support thereof refers to data found in a geological report made to him by Hoyt Rodney Gale on November 21, 1958.

In a supplemental report, dated June 29, 1959, the Geological Survey reported that the lands in the appellant's application are still properly classified as not prospectively valuable for sodium.

A mineral prospecting permit embracing lands included in outstanding desert land entries cannot be granted, unless the entries were impressed with mineral reservations. See Bertram N. Beal, 51 L.D. 162 (1925). 30 U.S.C., secs. 121-124 provide for the reservation of sodium in desert land entries; however, an entryman cannot be required to consent to such a reservation where the land is determined to be not prospectively valuable for sodium. The Geological Survey, having considered all of the evidence submitted by the appellant, has reported that the lands are not prospectively valuable for sodium. Therefore, it is necessary to reject the mineral prospecting permit application. Cf. Irma Gregg, A-27344 (August 9, 1956) and Bertram N. Beal, supra.

Accordingly, the decision of the Chief, Mineral Adjudication Unit, rejecting the application for land within outstanding unpatented entries not impressed with a sodium reservation was proper and is hereby affirmed.

Mr. Bailey is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Ned M. Bailey then the adverse parties to be served are:

Mr. Irving Peter Austin (LA 0102773)
715 S. Mayo Avenue
Compton, California

Mr. Danny R. Jones (LA 0102775)
215 S. Acacia
Compton, California

J P Beirne
Acting Director

Enclosure

DISTRIBUTION:
Mr. F. V. Lopardo, Attorney at Law (Certified Mail)
Mr. Ned M. Bailey (Regular Mail)
Mr. Irving Peter Austin (Regular Mail)
Mr. Danny R. Jones (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
EG

OIL AND GAS * 1 Generally

* 9 Lands Subject to Leasing

A non-competitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such lease which must be honored.

An attempted amendment of an oil and gas lease offer which substitutes other lands for those applied for originally must be processed as a new filing.

Harold Ladd Pierce, Los Angeles 0152469 (August 12, 1959)

f0

In reply refer to:
Los Angeles 0152469
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 12, 1959

Certified Mail
Return Receipt Requested

DECISION

	:	
Harold Ladd Pierce	:	Oil and Gas
	:	

Manager's Decision Affirmed as Modified

Mr. Harold Ladd Pierce appealed from a decision of the Manager, dated October 1, 1958, which rejected his oil and gas lease offer, filed August 9, 1957, 2:49 p.m., under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226) as to $NW\frac{1}{4}SW\frac{1}{4}$ sec. 24, T. 4 N., R. 25 W., S.B.M., California. The offer to that extent was rejected because the lands were embraced in oil and gas lease Los Angeles 0152446 issued October 1, 1958 to Francis J. Cain and Dore Martin pursuant to their offer filed August 8, 1957, 2:14 p.m.,

In his appeal, appellant states that prior to 3:00 p.m. of August 8, 1957 he submitted his offer for filing but was advised that the application could not be processed before the close of the business day and that he dated the application August 9, 1957 at which time he made his filing.

An examination of the records verify the status of the lands as stated by the Manager in his decision. Furthermore, there does not appear to be anything in the records to substantiate the appellants assertions.

If the land applied for is to be leased, the first person applying for it, if otherwise qualified to hold a lease, has a statutory preference right which must be honored. Cf. C. T. Hegwer et al., 62 I.D. 77 (1955). The first qualified applicant, in this case the applicant under Los Angeles 0152446 was entitled to have his application honored, if a lease was to be issued for the land.

In his appeal, appellant admits that the description in his offer for Lots 2, 5, 6 and 7 Sec. 24, T. 4 N., R. 25 W., S.B.M. was erroneous in that it did not conform to the official plat of survey as required by 43 CFR 192.42(g)(1) but that he meant to apply for Lots2, 5, 6 and 7 of sec. 25 same township and range and requests that his offer be reinstated to this extent.

The Bureau in Alberta Link, Fairbanks 016136 (September 17, 1958), held that an attempted amendment of an oil and gas lease offer which substitutes other lands for those applied for originally must be processed as a new filing.

The purported amendment must be rejected. Furthermore, the records show that Lot 2 of Sec. 25 above township is patented without mineral reservation to the United States and that according to the official plat of survey there doesn't appear to be any Lots 5, 6 and 7 in sec. 25.

Accordingly, the decision of the Manager is correct and it is hereby affirmed. The request for reinstating the offer to include the amendatory lands is denied.

Mr. Harold Ladd Pierce is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Pierce, then the adverse parties to be served are:

Francis J. Cain
1601 Milan Avenue
So. Pasadena, California

Dore Martin
13136 Van Owen
No. Hollywood, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Harold Ladd Pierce (Certified Mail)
Above adverse parties (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
WJ

59135-59

OIL AND GAS * 9 Lands Subject to Leasing

STATE GRANTS AND SELECTIONS * 2 School Lands

Title to unsurveyed nonmineral school sections in place vests in the State when the plat of survey is accepted, under the basic school grant.

It is proper to reject an offer for an oil and gas lease for such land since it is not subject to leasing under the Mineral Leasing Act.

Morris Lavine, Los Angeles 099026
(August 18,1959)

RD

In reply refer to:
Los Angeles 099026
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Morris Lavine : Oil and Gas
:
:

Decision Affirmed

Mr. Morris Lavine has appealed from a decision of the Chief, Mineral Adjudication Unit, rejecting his above-identified oil and gas lease offer filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226), for the reason the title to the land in question, lots 1, 2, 3 and 4, sec. 36, T. 10½ N., R. 27 W., S.B.M., California, is in the State of California and it is not subject to leasing as applied for.

The records show that the lease offer was filed by the appellant on December 8, 1952, that the plat of survey of the fractional township containing the above-described land had been accepted on January 2, 1951, and that patent was issued to the State for the described section 36, on March 19, 1957. The records also show that the lease offer filed by the appellant was rejected by the Manager as to sections 34 and 35, by decision dated November 2, 1956, which decision was affirmed by Bureau decision of June 19, 1958. 1/

The appellant contends in substance that he filed his application for an oil and gas lease on the land nearly five years prior to the time the patent was issued to the State, and therefore he should be entitled to a lease for the land. He also asserts that the land in the area is known to be mineral in character and that it was not the intent of the United States to vest oil and gas rights in the State of California in the granting of school land.

The appellant has not submitted any persuasive evidence that would sustain his contention that the land is mineral in character. The Geological Survey has reported that the land is without value for mineral, either metalliferous or nonmetalliferous. Even if the land were determined to be mineral in character, however, such school

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1/ The appellant includes sections 34 and 35 in his statement of reasons. However, since the previous action rejecting his offer therefor was final, these two sections are not in issue in this appeal.

sections in place may be granted to the States under the provisions of the Act of January 25, 1927 (43 U.S.C. sec. 870), as amended by the acts of May 2, 1932 (47 Stat. 140) and of April 22, 1954 (68 Stat. 57), and the act of July 11, 1956 (70 Stat. 529). The act of April 22, 1954, supra, does not apply to a school section the plat of survey of which was accepted on or before July 11, 1956. Solicitor's Opinion, M-36408, February 7, 1957.

In the instant case since the land has been determined to be nonmineral in character, title thereto vested in the State on January 2, 1951, at the time the plat of survey was accepted, under the original granting act of March 3, 1853 (10 Stat. 244) applicable to the State of California. While the appellant's lease offer was filed for the land after the plat of survey was accepted, had it been filed prior thereto that fact would not require a different conclusion, since it is well established that an application for a mineral lease on such land will not prevent a nonmineral school section grant from attaching. Cf. Dorothy P. Soeth, 60 I.D. 1 (1947). Moreover, while a patent was issued for the school section in question on March 19, 1957, the issuance of the patent was not necessary to vest title therein to the State, as title vested in the State at the time the plat of survey was accepted. Margaret Scharf, 57 I. D. 348 (1941).

The decision appealed from is therefore affirmed.

Mr. Morris Lavine is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

J P Beirne
Acting Director

Enclosure

DISTRIBUTION:

Mr. Morris Lavine (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
RBO

59185-59

appeal to Sec
affirmed A 28254 9-2-60

OIL AND GAS *1 Generally

* 9 Lands Subject to Leasing

It is proper to reject a lease offer where the agency having jurisdiction over the land recommends against the issuance of lease therefor, as not in the public interest for the reason the land is contaminated with unexploded ordnance which makes its use dangerous to both human life and property.

Paul J. Hilligardt, H. C. Mathews, Los Angeles 0154855 (August 26, 1959)

In reply refer to:

Los Angeles 0154855
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 26, 1959

Certified Mail
Return Receipt Requested

DECISION

Paul J. Hilligardt	:	Oil and Gas
H. C. Mathews	:	
	:	

Decision Affirmed

Messrs. Paul J. Hilligardt and H. C. Mathews have appealed from a decision of the Chief, Minerals Adjudication Unit, rejecting their above-identified oil and gas lease offer filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V., sec. 226), for the reason the land applied for is located within the California-Arizona Maneuver Area and is considered unsafe for use as contemplated by such a lease because of unexploded ordnance contained therein. The decision held it is not in the public interest to issue oil and gas leases in the area in question.

The records show that the land is located in the area withdrawn for use of the Army as part of the California-Arizona Maneuver Area in connection with Camp Young, California. The Corps of Engineers, U.S. Army, has submitted affidavits from Army officials showing that the land involved is part of an area which although attempts have been made to decontaminate and dedud it, still contains unexploded mines, bombs, shells and other missiles which constitute a hazard to life, limb, and property, rendering subsurface use of the lands dangerous. It was recommended that the particular area of which the land applied for forms a part, be restricted to surface use only.

The appellants contend in substance that in their opinion the land is not so contaminated as to be dangerous for development for oil and gas, as the land applied for is located a short distance from highways and a railroad which are presently in operation and have been since prior to World War II. The appellants also assert that decontamination teams have been furnished by the Corps of Engineers in connection with laying pipelines across land in the same area, and they feel that the Bureau of Land Management should also do the same in connection with the development of the land for oil and gas, to encourage the development of oil and gas in conformity with the conservation policy of the United States. The appellants request that a further investigation be made as to the actual danger existing from unexploded ordnance on the land.

Even though the lands involved in the appeal may be subject to leasing under the provisions of the Mineral Leasing Act despite the withdrawal, such leasing is discretionary with the Department, and the Department may refrain from issuing oil and gas leases where such would not be in the public interest. United States ex rel. Roughton v. Ickes, 101 F. 2d 248 (App., D. C., 1938). Where lands applied for are being administered by another agency and that agency objects to issuance of leases because the leasing of the land would interfere with the use for which the lands are reserved, it is proper to reject lease offers therefor. Cf. Richfield Oil Company et al., 66 I.D. 106 (1959), and cases therein cited.

Accordingly, the decision appealed from is affirmed.

Messrs. Paul J. Hilligardt and H. C. Mathews are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas
ActingDirector

Enclosure

DISTRIBUTION:

Mrssrs. Paul J. Hilligardt and H. C. Mathews (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
RBO

59185-59

OIL AND GAS * 9 Lands Subject to Leasing

* 3 Acreage Limitations (6-mile square rule)

An oil and gas lease offer which includes lands extending for more than six miles in an east-west or north-south direction because one section or township is slightly irregular is valid under revised regulation 43 CFR 192.42(g)(1)(i) and may be processed for issuance of lease, all else being regular.

Hugh W. Ford, Los Angeles 0153025 (September 4, 1959)

In reply refer to:

Los Angeles 0153025
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1959

DECISION

Hugh W. Ford : Oil and Gas

Case Remanded

Mr. Hugh W. Ford appealed from a decision of the Manager, dated October 7, 1958, which rejected his oil and gas lease offer filed September 13, 1957 under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 226) for the reason that the offer embraced lands not entirely within a 6-mile square as required by item 9 of the general instructions on back of Form 4-1158.

In the appeal, the appellant contends that the rule of approximation should be applied to the 6-mile square rule as it is to the acreage rule and that an offeror should not be required to submit two offers and two filing fees where only a very small part of the acreage lies outside the 6-mile square.

The record indicates that if two normal townships were involved here, the lands applied for would be within a 6-mile square. However, in view of the fact that T. 12 S., R. 11 E., S.B.M., appears to be an irregular township with the northerly boundary of Section 6 measuring 81.40 chains, this would appear to place approximately 92 feet outside of a strict interpretation of the 6-mile square rule.

In accordance with the revised regulations (43 CFR 192.42 (g)(1)(i) as published in Volume 24 F.R. at page 4140 of May 22, 1959, an oil and gas lease offer which describes lands as "entirely within an area 6-mile square or an area of six surveyed sections in length or width" may be accepted. (Emphasis supplied).

In view thereof, the appellant's oil and gas lease offer is remanded for further processing, all else being regular.

Earl J Thomas
Acting Director

Distribution on page 2

DISTRIBUTION:

Mr. Hugh W. Ford (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
WJ

Appealed to Secretary
affirmed A-28269
6-8-60

RULES OF PRACTICE * 11 Statement of Grounds 608

An appeal from a decision of the Manager is properly dismissed where the appellant fails to assign any specification of error in the decision appealed from.

Duncan Miller, Los Angeles 0137918 (September 25, 1959)

LO
Sec

In reply refer to:
Los Angeles 0137918
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Appeal Dismissed

Duncan Miller has appealed from a decision of the Chief, Minerals Adjudication Unit, dated March 11, 1959, which rejected in its entirety his above-noted oil and gas lease offer under the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C., 1952 ed., Secs. 351-359) on the basis that the lands applied for are situated within an incorporated city, are privately owned, or are set aside for military purposes.

In his notice of appeal and statement of reasons, the appellant indicates his belief that the lands are not set aside for military purposes, and are not situated within an incorporated city, and he states the Manager's decision is ambiguous.

Where an appellant merely states that there has been error and does not point out wherein the decision appealed from is believed to be erroneous, he has failed to state reasons for his appeal, as required by the rules of practice, and the appeal is properly dismissed. Duncan Miller, 65 I.D. 290 (1958). While the lease offer is subject to dismissal for procedural reasons as indicated it is further subject to rejection because, the lands are not leasable under the Mineral Leasing Act for Acquired Lands.

The record shows that all of the lands involved are situated within the incorporated city of Long Beach, California and are included within the boundaries of Air Force Plant No. 15, having been set aside for military purposes within the meaning of the Act of August 7, 1947, supra, and that a portion of the land has been conveyed to Douglas Air Craft, Incorporated.

Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C., 1952 ed., sec. 352) provides that acquired lands which are "(a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set appart for military or naval purposes, are excluded from the operation of the act."

Since the lands involved fall in the categories of lands excluded from leasing under the Act, the application was also subject to rejection for this reason. See Duncan Miller, A-27566 (April 29, 1958); Donald M. Snow, A-27464 (July 29, 1957).

For the reasons given, rejection of the lease offer is considered proper, and is affirmed.

Duncan Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
EG

60867-59

OIL AND GAS * 4 Assignments and Transfers

* 8 Extensions

* 9 Lands Subject to Leasing

Leases extended by partial assignments filed during the last month of the last year of the extended primary term of the base lease, will not be disturbed where such assignments were filed prior to August 29, 1958.

Lands embraced in leases extended for two years by assignment, are not available for further leasing, and it is proper to reject offers therefor.

Duncan Miller, Los Angeles 0159077, 0160390 (September 18, 1959)

RC

In reply refer to:
Los Angeles 0159077
0160390
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 18, 1959

DECISION

Duncan Miller : Oil and Gas

Decisions Affirmed

Mr. Duncan Miller has appealed from separate decisions of the Manager rejecting his above-identified oil and gas lease offers filed under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226), for the reason the land involved is included in existing oil and gas leases. Lease offer 0159077 was rejected as to a portion of the land embraced therein for the reason it was patented without a reservation of oil and gas to the United States. However, appellant has raised no issue as to this matter.

The records show that the land in question is embraced in outstanding leases Los Angeles 071285, 071285-A, 087594, and 087594-A. All of these leases were extended for two years beyond the extended primary term thereof by reason of partial assignments filed pursuant to the provisions of regulation 43 CFR 192.144(b). The partial assignments in each case were filed during the last month of the last year of the extended term of the base lease.

The appellant contends in substance that the partial assignments could not have legally extended the leases for the reason the base leases expired by operation of the law because there was no production on either lease.

Section 30(a) of the Mineral Leasing Act, as amended by the Act of July 29, 1954 (30 U.S.C., sec. 187a), and the regulation thereunder, 43 CFR 192.144, provide in pertinent part that:

> " * * * Any partial assignment of any lease shall segregate the assigned and retained portions thereof * * *; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil and gas in paying quantities upon any other segregated portion

> of the lands originally subject to such lease. Assignments under this section may also be made parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil and gas is produced in paying quantities." (Emphasis Supplied)

The Department in a number of opinions and decisions has held that the portions of leases of undeveloped land segregated by partial assignments are extended pursuant to section 30(a) of the Mineral Leasing Act, supra, for a minimum of two years from the effective date of the assignment, even though the two-year extension will continue the leases beyond the end of the five year extended term of the original lease. Solicitor's Opinions, M-36278, 62 I.D. 216, (1955); M-36342, 64 I.D. 127, (1957); M-36398, 64 I.D. 135, (1957); M-36464, 64 I.D. 309, (1957); Franco Western Oil Company et al., 64 I.D. 316, (1958), Richard P. DeSmet, et a
A-27837, October 29, 1958.

The Department has determined in Franco Western Oil Company et al., 65 I.D. 316, supra, that partial assignments filed during the last month of the last year of the extended term of the lease cannot effect the segregation of the leases, and entitle the segregated portions to a two-year extension afforded by the statutes. However, in a supplemental decision thereto, Franco Western Oil Company et al., 65 I.D. 427, (September 30, 1958), it was held that any action taken in extending oil and gas leases segregated by such assignments submitted on or before August 29, 1958, will not be disturbed.

Accordingly, since the assignments in these cases were filed on or before August 29, 1958, the segregated portions of the leases were properly extended for two years. The land being embraced in these extended leases, it was not available for further leasing, and it was proper to reject the lease offers therefor. Albert C. Massa et al., 63 I.D. 279 (1956); Stephen P. Dillon, Martha M. Roderick, 66 I.D. 148 (1959).

The decisions of the Manager are therefore affirmed.

Earl J. Thomas
ACTING Director

Approved: OCT 2 1959

Asst. Secretary of the Interior

(Distribution on next page)

DISTRIBUTION:

Mr. Duncan Miller (Regular Mail)
Shell Oil Company (Regular Mail)
Union Oil Company of California (Regular Mail)
Richfield Oil Corporation (Regular Mail)
Mrs. Calista Plyer (Regular Mail)
General Petroleum Company (Regular Mail)
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
RBO

OIL AND GAS * 1 Generally (Statement of Interest)
* 10 Lease Offers

Where an oil and gas offer was not accompanied by a statement of interest, nor such statement submitted within 15 days from the time of filing the offer, as required by regulation 43 CFR 192.42(e)(3)(iii), Circular 2009, the offer was properly rejected.

Harold Ladd Pierce, Los Angeles 0163487 (October 5, 1959)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0163487
5.04g

October 5, 1959

Certified Mail
Return Receipt Requested

DECISION

Harold Ladd Pierce : Oil and Gas

Decision Affirmed

Harold Ladd Pierce has appealed to the Director, Bureau of Land Management, from a decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, dated April 17, 1959, which rejected Mr. Pierce's oil and gas lease offer filed pursuant to the Mineral Leasing Act, as amended,(30 U.S.C., 1952 ed., Supp. V, sec. 226), on the ground that he did not submit, within fifteen days after filing his lease offer the statement of interest required by regulation 43 CFR 192.42(e)(3)(iii).

The appellant predicates his appeal on the ground that the language of the said regulation is ambiguous and is therefore not legally enforceable because "it implies that the original signed statement is sufficient and only if there are other interests or partners undisclosed that written notice should then be given."

The cited regulation (Circular 2009), published in the Federal Register on January 13, 1959 (24 F.R. 282), effective February 12, 1959, provides in pertinent part as follows:

> "(e) Each offer, when first filed should be accompanied by:
>
> * * * * * * *
>
> (3)(iii) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names and the nature and extent of the interest therein of the other interested parties, * * * Such statement must be signed by all of the interested parties including the offerer. * * * Such statement must be filed not later than 15 days after the filing of the lease offer."

The records show that the offer filed on March 15, 1959, was not accompanied by a statement as required by the regulation nor was one filed during the period allowed.

The appellant's allegation of ambiguity cannot be reconciled with the clear language of the regulation as to the content and execution of the statement where the offeror is the sole party in interest and the content and execution of the statement including the offeror where others are parties in interest.

Where an offeror has not complied with the mandatory requirements of the regulations, it is proper to reject the offer to lease, Clifford Thorp Woodward, A-25905 (Supp.) (June 15, 1951); Bert Wheeler, BLM-A 049025, etc. (Arkansas) (August 14, 1959).

Accordingly, the decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, rejecting the offer was correct and is hereby affirmed.

Harold Ladd Pierce is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Harold Ladd Pierce (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
MHS

OIL AND GAS * 6 Consent of Agency

* 9 Lands Subject to Leasing

PUBLIC LANDS * 7 Withdrawals

An application for a withdrawal of land filed by the Bureau of Reclamation, temporarily segregates the land under its administrative jurisdiction, and even though the withdrawal proposed does not contemplate that the land will be withdrawn from oil and gas leasing, it is proper to reject an offer therefor if that Bureau objects to the issuance of a lease on the ground that it will interfere with the use for which the land is being reserved.

Justin S. Snow, Los Angeles 0153269 (October 6, 1959)

In reply refer to:
Los Angeles 0153269
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 6, 1959

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Justin S. Snow : Oil and Gas

Decision Modified and Affirmed

Mr. Justin S. Snow has appealed from a decision of the Chief, Minerals Adjudication Unit, which rejected his above-identified oil and gas lease offer as to land embraced in a first form reclamation withdrawal 1/, based upon the objection of the Bureau of Reclamation to the issuance of a lease for the land in question for the reason that such leasing would interfere with the use of the land for the construction of Sespe irrigation tunnel, in connection with their Calleguas Project.

The records reveal that the report of the Bureau of Reclamation indicated the land was already under first form reclamation withdrawal, however, the land is included in a proposed withdrawal, Los Angeles 0156728, pursuant to the provisions of section 3, Act of June 17, 1902 (32 Stat. 388), notice of which was published in the Federal Register on September 5, 1958. Final action to formally withdraw the land has not been completed as yet.

The appellant contends in substance since his lease offer was filed prior to the proposed withdrawal of the land for reclamation purposes that he has a valid existing right; and as the proposed withdrawal does not include a withdrawal of the lands from the mineral leasing act, but only restricts drilling for oil or mining in certain areas, he is entitled to a lease, the Bureau of Reclamation having no authority to deny the lease. The appellant asserts that he is willing to conduct his operations in connection with his oil and gas lease in a manner that would not interfere with the operation of the Bureau of Reclamation.

1/ The land is described as what probably will be when surveyed $W\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, Sec. 36, T. 5 N., R. 20 W., S.B.M., California.

It is provided in 43 CFR, 1958 Supp., 295.11(a), relating to withdrawals and reservations of public lands, in pertinent part as follows:

> "The noting of the receipt of the application in the tract books or on the official plats maintained by the Land Office in which the application was properly filed * * * shall temporarily segregate such lands from * * * disposal under the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. * * * Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands."

The proposed withdrawal of the land in question does not segregate it from oil and gas leasing, but proposes only to restrict drilling for oil and mining in certain areas. The administrative jurisdiction of the land is in the Bureau of Reclamation. It has been held that even though lands may be subject to oil and gas leasing, oil and gas lease offers therefor are properly rejected where the agency having jurisdiction objects to the issuance of a lease on the ground that it will interfere with the use for which the land is withdrawn. See Richfield Oil Corporation et al., 66 I.D. 106 (1959), and cases cited therein. Accordingly, it was proper to reject the lease offer in the instant case on the basis of the objection by the Bureau of Reclamation.

The rejection of the lease offer is affirmed, for the reasons stated herein. The decision appealed from is so modified.

Mr. Justin S. Snow is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Regional Director
Bureau of Reclamation
P. O. Box 2511
Sacramento, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Justin S. Snow (Certified Mail)
Regional Director, Bureau of Reclamation
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
RBO

OIL AND GAS * 9 Lands Subject to Leasing

It is within the discretion of the Secretary (or his delegate) to refuse leasing of lands for oil and gas purposes where it is determined that such leasing would not be in the public interest.

Harry L. Minium et al., Los Angeles 0155122 (October 6, 1959)

In reply refer to:

Los Angeles 0155122
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 6, 1959

Certified Mail
Return Receipt Requested

DECISION

Harry L. Minium
Frieda Minium
Irwin C. Minium
Cornelia Minium

Oil and Gas

Decision Affirmed

The above-named parties have appealed from a decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, dated February 5, 1959, rejecting their noncompetitive oil and gas lease offer, Los Angeles 0155122, submitted under the provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226), because the lands lie within the California-Arizona Maneuver Area, and the Corps of Engineers, United States Army, has advised that this area contains unexploded ordnance which may be hazardous to life and property. Consequently, the Manager held that it was not in the public interest to issue oil and gas leases in this area.

The appellants contend that the lands have been cleared of hazardous devices to a depth of approximately 10 inches, and that it is in the public interest to lease the lands since they are extremely valuable for oil and gas development purposes. Further, the appellants assert that they are willing to bear the cost of having demolition experts from the Corps of Engineers clear the area where they will drill, and that they will absolve the Government from any liability resulting from an accident from an undetected missile.

In a letter dated August 26, 1958, from the Assistant Secretary of the Interior to the Secretary of the Army (file number 1906942), it is stated that before the Interior Department can assume full jurisdiction of the lands in the California-Arizona Maneuver Area, further efforts to decontaminate certain areas appear to be in order. These areas are shown in red on United States Army Corps of Engineers' Map, identified as "California-Arizona Maneuver Area Dedudding Program" drawing 16-13-01, dated October, 1951. All of the lands in the appellants' offer are in the contaminated areas. In these circumstances, it appears that the appellants' offer was properly rejected, under the discretionary power of the Secretary (or his delegate), on the basis that it is not in the public interest to lease the lands for oil and gas purposes. 30 U.S.C., 1952 ed., Supp. V, sec. 226; United States ex rel. Jordan v. Ickes, 143 F.2d 152 (App. D.C. 1944), cert. den. 323 U.S. 759.

Accordingly, the decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Harry L. Minium (Certified Mail)
Mrs. Frieda Minium (Certified Mail)
Mr. Irwin C. Minium (Certified Mail)
Mrs. Cornelia Minium (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
LS

62479-59

OIL AND GAS * 9 Lands Subject to Leasing

Lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for leasing and applications filed for such lands must be rejected.

Justin S. Snow, Sacramento 056886 (October 22, 1959)

In reply refer to:

Sacramento 056886
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 22, 1959

Certified Mail
Return Receipt Requested

DECISION

Justin S. Snow : Oil and Gas

Decision Affirmed

Justin S. Snow has appealed from a decision of the Chief, Minerals Adjudication Unit, which rejected his above-identified lease offer under the Mineral Leasing Act of 1920 (30 U.S.C., 1952 ed., sec. 226) on the basis of conflict with existing lease Sacramento 052740. [1]

The record shows that the lands applied for (lots 11 and 12, sec. 7, T. 30 S., R. 21 E., M.D.M., California) were included in oil and gas lease, Sacramento 052740, issued effective January 1, 1957, pursuant to an offer filed August 30, 1956. [2] This lease had not been cancelled and the Land Office tract book records so noted at the time the appellant's lease offer was filed at 10:00 A.M., November 4, 1958. The Department has held that lands included within an outstanding oil and gas lease, whether such lease is void, voidable, or valid, are not available for leasing, and applications filed for such lands must be rejected. Joyce A. Cabot et al., 63 I.D. 122 (1956); Margaret A. Andrews et al., 64 I.D. 9 (1957). The lands in question were segregated by the erroneously-issued lease until notation of the cancellation was made upon the records of the Land Office. E. A. Vaughey, 63 I.D. 85 (1956). The appellant's contention that the cancellation should render the lands available for filing from the date of the erroneously-issued lease is contrary to the regulation (43 CFR 192.43).

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[1] The record discloses the offer is also fatally defective because the original only was filed, without the required four copies, and the time for correcting such defect has expired. 43 CFR 192.42 (b); 43 CFR 192.42 (g) (1) (vi).

[2] In Bureau decision Duncan Miller, Sacramento 052811 (October 20, 1958), it was held this lease was issued erroneously and should be cancelled.

For the reasons given the Manager's decision is affirmed.

Mr. Snow is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Justin S. Snow (Certified Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
EG

62479-59

OIL AND GAS * * Lands Subject to Leasing

A noncompetitive oil and gas lease must be issued to the qualified person who first submits a proper application for it, if a lease is to be issued for the land; and where a lease has been issued to the senior applicant, who was determined to be entitled to the lease, the junior filed offer is properly rejected.

Where an assertion of irregularities in the issuance of a conflicting lease is not buttressed by positive and substantial evidence and where it is not shown that the lease was issued in contravention of the law or regulations, the lease constitutes a binding contract which will not be disturbed.

Jean Marvin Powell, Los Angeles 0151607 November 27, 1959

In reply refer to:

Los Angeles 0151607
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 27, 1959

Certified Mail
Return Receipt Requested

DECISION

Jean Marvin Powell : Oil and Gas
:
:

Manager's Decision Affirmed

Mrs. Jean Marvin Powell appealed from a decision of the Manager, dated August 11,1958, which rejected her oil and gas lease offer filed June 24, 1957, at 10:03 A.M., under the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226) for the reason that the land applied for is embraced in oil and gas lease Los Angeles 0151608, issued as of June 1, 1958, to Raymond J. Hansen pursuant to his offer filed June 24, 1957 at 10:00 A.M.

The records show that the land in question was embraced previously in oil and gas lease Los Angeles 056694. A relinquishment of this lease was filed on June 21, 1957, and the lease was noted as relinquished on the tract books of the Land Office on June 24, 1957, at 9:50 A.M. Lease offer Los Angeles 0151608 was filed at 10:00 A.M. on that day, as noted above.

In her appeal appellant alleges irregularities in the Land Office in connection with the Hansen offer and she states issuance of the lease was tainted with fraud and collusion. She states that she filed the relinquishment of her lease, Los Angeles 056694, immediately prior to the closing of the Land Office to the public, and it would not have been possible for Hansen to know the relinquishment was filed except by inside information.

The pertinent regulation (43 CFR 192.43), in effect at the time of filing of the lease offers here concerned, provided in material part that immediately upon notation of the relinquishment in the tract book records of the Land Office, the previously leased lands become available for further leasing unless they are on a known geologic structure of a producing oil or gas field or are withdrawn from leasing.

A noncompetitive oil and gas lease must be issued to the qualifie person who first submits a proper application for it, if a lease is to be issued for the land, for that person has a statutory preference right to such a lease which must be honored. C. T. Hegwer et al., 62 I.D. 77 (1955). A lease having been issued to the senior applicant, who was determined to be entitled to the issuance of a lease pursuant to his prior filed offer, the Powell offer was properly rejected for these lands.

Since the appellant's broad assertions of irregularities in the issuance of the conflicting lease are not buttressed by any positive and substantial evidence, and since she has not established that the lease was issued in contravention of any law or regulation, the lease constitutes a binding contract and cannot be disturbed.

Accordingly, the decision of the Manager was correct, and it is hereby affirmed.

Mrs. Powell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mrs. Powell then the adverse party to be served is:

Mr. Raymond J. Hansen
150 South Avenue 55
Los Angeles 42, California

Acting Director

Enclosure

DISTRIBUTION:
Mrs. Jean Marvin Powell (Certified Mail)
Mr. Raymond J. Hansen (Regular Mail)
Minerals Staff Officer (3)
Geological Sruvey (3)
Appeals List No. 1
WJ

appeal to Sec
affirmed A-28433 - 8-30-60

OIL AND GAS * 9 Lands Subject to Leasing
* 12 Relinquishments
* 19 Priority of Offer

Land in relinquished oil and gas leases became available for filing of lease offers when the relinquishments were noted on the tractbooks, the lands not being situated on a known geologic structure of a producing oil or gas field and not being withdrawn from leasing. Duncan Miller, Los Angeles 0156991 (December 21, 1959)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0156991
5.04g

December 21, 1959

Certified Mail
Return Receipt Requested

DECISION

Duncan Miller : Oil and Gas

Decision Affirmed

Duncan Miller has appealed from a decision of the Manager which rejected his above-identified oil and gas lease offer, filed April 10, 1958, under the Mineral Leasing Act of 1920, as amended (30 U.S.C., 1952 ed., sec. 226), for the reason that the land applied for is embraced in oil and gas lease Los Angeles 0148996 issued effective May 1, 1958, to the Union Oil Company of California pursuant to an offer filed March 22, 1957.

Mr. Miller questions the validity of the conflicting lease, Los Angeles 0148996, issued to the Union Oil Company following the relinquishment by the Company of a prior lease, Los Angeles 061190, on the same lands. The prior lease was issued effective July 1, 1947, and relinquished on March 21, 1957.

The regulations (43 CFR 192.43) provide, and numerous departmental decisions have held, that a lessee of an oil and gas lease who relinquishes his lease or permits it to be cancelled is not thereby disqualified from applying for a new lease of the same lands, nor is a person disqualified from filing simply because he knew a prior lease on the land was to be relinquished. Duncan Miller, A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959).

The lands being subject to leasing, the first person to apply for a lease of them after the relinquishment of the prior lease was noted on the tractbook, if otherwise qualified to hold a lease, had a statutory preference right. C. T. Hegwer et al., 62 I.D. 77 (1955).

In view thereof the Manager's decision is correct, and is hereby affirmed.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Miller, then the adverse party to be served is:

Union Oil Company
P. O. Box 7600
Los Angeles 54, California

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Certified Mail)
Union Oil Company (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
EG

LO(Sac)

OIL AND GAS * 10 Lease Offers

* 18 Description of Land

Where an offer contains an indefinite description as to certain unsurveyed lands applied for, but other lands in the offer are properly described, the offer may be accepted as to the properly described lands, all else being regular.

Justin S. Snow, Los Angeles 0149681 December 31, 1959

RD

In reply refer to:

Los Angeles 0149601
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 31, 1959

DECISION

Justin S. Snow : Oil and Gas

Decision Reversed; Case Remanded

Mr. Justin S. Snow has appealed from a decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, dated May 11, 1959, which rejected his above-noted noncompetitive oil and gas lease offer, submitted under the provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226), because the land description was insufficient to identify the lands.

The appellant contends that the land description for the third tract of land described in his lease offer may be insufficient to identify the land, but that the description of tracts 1, 2 and 4 is sufficient for this purpose. Therefore, the appellant asserts that a lease should be issued for the lands properly described since they total more than 640 acres and are located within a six-mile radius.

The Acting Cadastral Engineering Staff Officer, in a memorandum dated September 28, 1959, reported that the offeror's description for parcels 1, 2 and 4 appears to be adequate to identify the lands applied for, but that his description for parcel 3 does not close by 1/4 of a mile and does not identify the land desired.

The Department has held that where an offer contains an indefinite description as to certain unsurveyed lands applied for, but other lands in the offer are properly described, the offer may be accepted as to the properly described lands, all else being regular. Duncan Miller, A-28035 (October 30, 1959).

Accordingly, the decision of the Chief, Minerals Adjudication Unit, Los Angeles Land Office, is reversed and the case remanded to the Land Office through the Bureau's State Supervisor for further processing in accordance with this decision.

Acting Director

DISTRIBUTION:

Mr. Justin S. Snow (Regular Mail)
Minerals Staff Officer (3)
Geological Survey (3)
Appeals List No. 1
LS